

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Volume 6  
Pages 1167 - 1371

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:  
Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE  
PRESIDING OFFICER

\* \* \* \* \*

REPORT OF PROCEEDINGS

May 7, 2012

9:49 a.m.

\* \* \* \* \*

New Hampshire State Archives and Genealogical  
Public Research Room  
71 South Fruit Street  
Concord, New Hampshire 03301

Court Reporter: Kimberly A. Smith, CSR, CRR, RDR

## 1 APPEARANCES:

2 BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
3 By: Andru H. Volinsky, Esq.  
4 and Roy W. Tilsley, Jr., Esq.  
5 and Christopher G. Aslin, Esq.  
6 670 North Commercial Street, Suite 108  
7 Post Office Box 1120  
8 Manchester, NH 03105-1120  
9 (603) 623-8700  
10 avolinsky@bernsteinshur.com  
11 rtilsley@bernsteinshur.com  
12 caslin@bernsteinshur.com

13 and

14 NH Bureau of Securities Regulation  
15 By: Earle F. Wingate, III, Esq.  
16 and Adrian LaRoche, Esq.  
17 and Eric Forcier, Esq.  
18 State House Room 204  
19 107 North Main Street  
20 Concord, NH 03301-4989  
21 (603) 271-1463  
22 earle.wingate@sos.nh.gov  
23 adrian.larochelle@sos.nh.gov  
eric.forcier@sos.nh.gov

for the Petitioner, Bureau of  
Securities Regulation;

17 PRETI, FLAHERTY, BELIVEAU & PACHIOS, Chtd., LLP  
18 By: William C. Saturley, Esq.  
19 and Brian M. Quirk, Esq.  
20 57 North Main Street  
21 Post Office Box 1318  
22 Concord, NH 03302-1318  
23 (603) 410-1500  
wsaturley@preti.com  
bquirk@preti.com

and

1 APPEARANCES: (continued)

2  
3 RAMSDELL LAW FIRM, PLLC  
4 By: Michael D. Ramsdell, Esq.  
5 69 Bay Street  
6 Manchester, NH 03104  
7 (603) 606-1766  
8 mramsdel@ramsdelllawfirm.com

9 and

10 LOCAL GOVERNMENT CENTER  
11 By: David Frydman, Esq.  
12 25 Triangle Park Drive  
13 Post Office Box 617  
14 Concord, NH 03302-0617  
15 (603) 224-7447  
16 dfrydman@nhlgc.org

17 for the corporate and LLC respondents;

18  
19 SHAHEEN & GORDON, P.A.  
20 By: Steven M. Gordon, Esq.  
21 and Benjamin Siracusa Hillman, Esq.  
22 107 Storrs Street  
23 Post Office Box 2703  
Concord, NH 03302  
(603) 225-7262  
sgordon@shaheengordon.com  
bsiracusahillman@shaheengordon.com

for the Respondent Maura Carroll;

HOWARD & RUOFF, PLLC  
By: Mark E. Howard, Esq.  
and Kimberly Myers, Esq.  
1850 Elm Street, Suite 6  
Manchester, NH 03104  
(603) 625-1254  
mhoward@howardruoff.com  
kmyers@howardruoff.com

for the Respondent Peter J. Curro.

## I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

WITNESS: Thomas Enright	Page
Direct Examination by Mr. Saturley	1178
Cross-Examination by Mr. Volinsky	1211
Redirect Examination by Mr. Saturley	1248

## AFTERNOON SESSION

WITNESS: Peter Riemer	Page
Direct Examination by Mr. Saturley	1251
Cross-Examination by Mr. Volinsky	1318
Redirect Examination by Mr. Saturley	1351
Recross-Examination by Mr. Volinsky	1357

## EXHIBITS IN EVIDENCE

Tilsley representation re exhibits	1171
LGC 269	1311

09:49:58 1 THE PRESIDING OFFICER: Good morning,  
09:50:01 2 ladies and gentlemen. This is Day 6 in the matter of  
09:50:09 3 the Local Government Center, Inc., et al. My name is  
09:50:15 4 Don Mitchell, and I'm the hearing officer.

09:50:19 5 We have a couple housekeeping items  
09:50:22 6 this morning first. And reminding those that the  
09:50:31 7 Bureau of Securities Regulation rested their case in  
09:50:33 8 the prior testimonial day at its conclusion. And  
09:50:40 9 following that, several motions were made.

09:50:44 10 So first, we have a -- I'm going to  
09:50:48 11 recognize Attorney Tilsley from the Bureau of  
09:50:55 12 Securities Regulation for purposes of entering  
09:50:58 13 information into the record which was not done on  
09:51:02 14 Friday. Although the participating counsel did  
09:51:11 15 initially document, I would like a more formal record.

09:51:18 16 And I understand, Mr. Tilsley, you  
09:51:20 17 rise to represent what exhibits in total have -- the  
09:51:29 18 parties have agreed have been admitted as full  
09:51:34 19 exhibits during the course of the BSR case.

09:51:40 20 MR. TILSLEY: Correct.

09:51:40 21 THE PRESIDING OFFICER: Thank you. Would  
09:51:42 22 you please do so.

09:51:43 23 MR. TILSLEY: Sure. Based on the documents

09:51:44 1 that we submitted on Friday, the following BSR  
09:51:48 2 documents have been marked as full exhibits: 1 through  
09:51:53 3 9, 12 through 16, 19 through 22, 24 and 25, 28 to 35,  
09:52:06 4 39, 42, 43, 45, 46, 48 through 51, 53, 54, 56 through  
09:52:23 5 67, 68A, 68B, 68C, 68E, and finally, 69 through 73.

09:52:40 6 The following documents have been  
09:52:42 7 marked -- again, pursuant to the list we prepared  
09:52:46 8 Friday -- as full exhibits on behalf of the  
09:52:49 9 respondents: Respondents Exhibits No. 1 through 233,  
09:52:57 10 236 to 261, 273 to 331, 334, 344 to 365, 368 to 373,  
09:53:15 11 375 to 383, 385 to 406, 409, 411 to 426, 431 to 437,  
09:53:33 12 441 to 446, 450, 456 to 459, 460 and 461.

09:53:49 13 Thank you.

09:53:51 14 THE PRESIDING OFFICER: That completes the  
09:53:52 15 list, Mr. Tilsley?

09:53:53 16 MR. TILSLEY: It does, sir.

09:53:54 17 THE PRESIDING OFFICER: Okay. Mr. Tilsley,  
09:54:07 18 do you have your list of Friday handy that you  
09:54:12 19 initialed?

09:54:13 20 MR. TILSLEY: I don't have it.

09:54:13 21 THE PRESIDING OFFICER: Okay. You don't  
09:54:13 22 have an initialed copy?

09:54:13 23 MR. TILSLEY: I have a list, but not an

09:54:14 1 initialed copy.

09:54:14 2 THE PRESIDING OFFICER: Okay. Directing  
09:54:16 3 your attention to Exhibit 460 --

09:54:20 4 MR. TILSLEY: Oh, let me -- I'm sorry.  
09:54:21 5 I was looking at that as I said it. Those have not  
09:54:23 6 been marked yet. I added them to my list this  
09:54:25 7 morning because we've agreed that they can be marked  
09:54:28 8 when LGC presents them later this morning. So 460  
09:54:32 9 and 461 are not yet full exhibits.

09:54:35 10 THE PRESIDING OFFICER: Thank you.

09:54:35 11 MR. TILSLEY: I'm sorry.

09:54:52 12 THE PRESIDING OFFICER: On Friday, several  
09:54:54 13 motions of a dispositive nature were submitted by the  
09:54:59 14 several respondents at the close of the petitioner,  
09:55:07 15 Bureau of Securities Regulation.

09:55:09 16 My decision will be an oral decision.  
09:55:17 17 And I will state for counsel and for others' purposes  
09:55:22 18 that the standard generally recognized -- and has  
09:55:29 19 been acknowledged by at least two of the respondents'  
09:55:37 20 counsel -- would be to have the hearing officer apply  
09:55:45 21 what's referred to as a prima facie standard. And  
09:55:54 22 the prima facie standard is a standard that's applied  
09:55:58 23 against all the evidence to that point.

09:56:02 1 Here, it is the testimony represented  
09:56:06 2 by those transcripts which you see in front of me  
09:56:10 3 which was testimony offered last week and these  
09:56:20 4 exhibits that have been just read into the record.  
09:56:28 5 And again, I want to accentuate that for LGC, 460 and  
09:56:35 6 461 are not yet in the record.

09:56:39 7 Then after reviewing that evidence,  
09:56:42 8 that I have to balance as to whether or not the  
09:56:46 9 moving party, which is the Bureau of Securities  
09:56:50 10 Regulation here, has presented evidence on the  
09:56:55 11 essential facts that are necessary to prove its case.  
09:57:05 12 This does not mean that this evidence necessarily has  
09:57:10 13 to be conclusive or that it cannot be rebutted by the  
09:57:18 14 respondents when they present their own cases.

09:57:25 15 I am aware that in limited situations,  
09:57:29 16 the court in New Hampshire has allowed a judge, when  
09:57:34 17 that judge is acting as both the impartial adjudicator  
09:57:40 18 and the trier of facts -- that is, when a jury is  
09:57:43 19 waived and only the judge is participating both -- in  
09:57:48 20 both those roles -- that New Hampshire courts have  
09:57:54 21 allowed the judge to make a determination on the  
09:58:00 22 basis other than the prima facie basis that I've just  
09:58:05 23 explained.

09:58:05 1           Instead, the court has allowed the  
09:58:07 2 judge to expedite the process of dismissing the  
09:58:11 3 nonmoving party's -- which would be the Bureau of  
09:58:20 4 Securities Regulation -- case using a higher  
09:58:21 5 standard. And that higher standard calls for a  
09:58:24 6 determination, were I to adopt that role, a higher  
09:58:32 7 standard against which to measure the evidence that  
09:58:34 8 was presented. And that would call on me to weigh  
09:58:38 9 that evidence as to whether or not it reaches a level  
09:58:42 10 of preponderance of the evidence.

09:58:49 11           That is to say, that the evidence  
09:58:50 12 presented by the Bureau is essentially more  
09:58:53 13 convincing than the evidence presented by the  
09:58:56 14 respondents in their respective cases regarding the  
09:59:00 15 several counts alleged and claims contained within.

09:59:08 16           The New Hampshire court, in allowing  
09:59:19 17 the judge acting as a trier of fact without a jury to  
09:59:29 18 conclude in such a fashion -- that is, to conclude  
09:59:32 19 that dismissal is warranted on the higher standard of  
09:59:35 20 preponderance -- would require that that decision be  
09:59:43 21 supported by findings of fact. These findings of  
09:59:47 22 fact would be findings that I would make from the  
09:59:51 23 evidence presented.

09:59:57 1 I am not adopting that higher standard.  
10:00:05 2 I have found no law that extends the New Hampshire  
10:00:12 3 findings, both in 1991 and 2011 -- that extends that  
10:00:22 4 to a hearing officer -- that is, a non-sworn  
10:00:29 5 constitutional judge. And I'm not prepared in this  
10:00:34 6 case to extend that although our roles are similar.

10:00:43 7 Therefore, I review the plaintiff's --  
10:00:47 8 I'm sorry -- the petitioner's, Bureau of Securities  
10:00:51 9 Regulation, claims in that light.

10:01:00 10 Using that standard, I do find that  
10:01:09 11 the Bureau of Securities Regulation through the  
10:01:12 12 testimony and through such cross-examination that was  
10:01:16 13 conducted and through a review of the boxes of  
10:01:27 14 exhibits, that they have offered evidence on all  
10:01:32 15 essential points.

10:01:40 16 Obviously, some are stronger than  
10:01:42 17 others. But I must conclude, with the evidence that  
10:01:46 18 I have reviewed, that there is evidence that  
10:01:52 19 addresses the aspects that have to be proven by the  
10:01:59 20 Bureau of Securities Regulation.

10:02:07 21 Therefore, I deny each respondent's  
10:02:16 22 motions to dismiss at this time in the proceedings.  
10:02:24 23 I do so without prejudice to allow such motions later

10:02:33 1 in these proceedings, at which time the level of  
10:02:49 2 examination that I would use for my determination  
10:02:54 3 would be the preponderance of the evidence.

10:03:02 4 Thank you. We'll take a brief five-  
10:03:04 5 minute recess and then begin with the -- would it be,  
10:03:12 6 Mr. Saturley, the LGC going first among the  
10:03:21 7 respondents?

10:03:22 8 MR. SATURLEY: Yes, Mr. Mitchell.

10:03:27 9 THE PRESIDING OFFICER: Thank you. Five  
10:03:29 10 minutes then, please. We're off the record.

10:03:30 11 (Recess at 10:03 a.m.,  
10:17:50 12 resumed at 10:17 a.m.)

10:17:53 13 THE PRESIDING OFFICER: Good morning,  
10:17:59 14 Mr. Saturley. And it's my understanding that the  
10:18:02 15 respondents, the LGC entities, are prepared to go  
10:18:06 16 forward with their case-in-chief.

10:18:09 17 MR. SATURLEY: That's correct.

10:18:09 18 THE PRESIDING OFFICER: Please proceed, sir.

10:18:10 19 MR. SATURLEY: Our first witness is Thomas  
10:18:14 20 Enright. Would you like to swear him in or would you  
10:18:18 21 like me to do so, sir?

10:18:20 22 THE PRESIDING OFFICER: I'm sorry. Would  
10:18:21 23 you do so this morning.

10:18:22 1 MR. SATURLEY: Yes.

10:18:22 2 THOMAS ENRIGHT,  
10:18:22 3 having been first duly sworn by Mr. Saturley,  
10:18:30 4 was examined and testified as follows:

10:18:30 5 DIRECT EXAMINATION

10:18:32 6 BY MR. SATURLEY:

10:18:33 7 Q. Would you please, for the record, state  
10:18:34 8 your full name.

10:18:36 9 A. Thomas Enright.

10:18:39 10 Q. And your address?

10:18:39 11 A. 35 Main Street, Hollis, New Hampshire.

10:18:43 12 Q. And what's your connection to the Local  
10:18:46 13 Government Center?

10:18:46 14 A. I'm currently the chairman of the Board of  
10:18:49 15 Directors.

10:18:49 16 Q. Have you been a member of the board for a  
10:18:52 17 number of years?

10:18:53 18 A. Eight years. July 2004 was my first time  
10:18:57 19 on the board.

10:18:58 20 Q. And have you been here through this  
10:19:04 21 proceeding, through all of last week's testimony?

10:19:07 22 A. Every single minute of it.

10:19:09 23 Q. Now that the LGC is starting its case,

10:19:11 1 understanding that testimony is not necessarily a fun  
10:19:13 2 thing to do, but did you look for an opportunity to  
10:19:18 3 speak this morning?

10:19:19 4 A. Absolutely.

10:19:20 5 Q. And why is that?

10:19:20 6 A. Because as I heard this case and as I have  
10:19:29 7 read everything I could about this case, this case is  
10:19:31 8 about me and the Board of Directors and the decisions  
10:19:36 9 that we have made. I have participated in almost  
10:19:39 10 every decision that has been complained about. And  
10:19:44 11 if I have not participated in those decisions, I have  
10:19:48 12 stood behind those decisions because they were made  
10:19:51 13 just before my joining the board.

10:19:53 14 So I've had ample opportunity to  
10:19:57 15 consider all of the aspects of this case during my  
10:19:59 16 eight years on this board. I've had ample opportunity  
10:20:03 17 to complain. And rather, I am proud of the decisions.  
10:20:08 18 I can defend them. And I stand by them.

10:20:15 19 Q. Is there any personal experience of your  
10:20:17 20 own that you find particularly relevant to your  
10:20:20 21 service on the board of the Local Government Center?

10:20:25 22 A. I think there is. And -- of course, right  
10:20:29 23 now, I'm the introduction to the Board of Directors.

10:20:33 1 But there are 28 board members. And I think they all  
10:20:39 2 are similar to me -- have similar aspects to me in  
10:20:44 3 that they have a life of work experience. They take  
10:20:49 4 their job seriously. And so we all bring a little  
10:20:54 5 different perspective. But here's -- here's what --  
10:20:59 6 what I think helps me bring some relevancy to my job  
10:21:03 7 here.

10:21:04 8 My first job out of -- after Dartmouth  
10:21:09 9 College was the U.S. Navy, four years. I'm very  
10:21:15 10 proud of that service. I was in a flight status.  
10:21:24 11 P-3s out of Brunswick, Maine. And in addition to  
10:21:31 12 your flight status, you are assigned to a ground job.  
10:21:35 13 Turned out that my ground job was safety officer.  
10:21:38 14 There were two safety officers. I was first a junior  
10:21:43 15 safety officer, then later the senior safety officer.

10:21:46 16 But in hindsight, what this was all  
10:21:49 17 about was risk management and how the Navy did it in  
10:21:52 18 a very dangerous occupation. I can't think of --  
10:21:56 19 there are few jobs that I can think of more dangerous  
10:21:59 20 than flying a military aircraft. And the reason we  
10:22:05 21 did it so successfully was our whole program -- all  
10:22:10 22 of my training, all of my then operational  
10:22:18 23 experience -- was based on training and procedures.

10:22:23 1 And I had thick manuals. And I was taught that as  
10:22:28 2 long as I followed the procedures in those manuals,  
10:22:37 3 attended to handling things safely, that I wouldn't  
10:22:41 4 kill myself. And if I didn't, it's very likely I  
10:22:45 5 would.

10:22:45 6 So my first introduction to risk  
10:22:48 7 management had -- I was taught and later experienced --  
10:22:56 8 had life-or-death consequences. So I took it  
10:22:59 9 seriously.

10:23:00 10 After the Navy, I went to law school,  
10:23:04 11 Boston College, and then joined my father, who was  
10:23:07 12 also an attorney, and others in a firm that he had in  
10:23:16 13 a 27-year practice of law. And during the course of  
10:23:20 14 that practice, I served on the Board of Directors of  
10:23:22 15 two banks at separate times. And in both of those  
10:23:27 16 instances, I was on the loan committee of those banks.

10:23:31 17 And I think that brings relevance  
10:23:32 18 because for almost 20 years of that career, I was  
10:23:38 19 involved in making risk decisions, looking at credit,  
10:23:42 20 looking at ability to pay back a loan, and then  
10:23:46 21 assessing whether loan loss reserves in a bank were  
10:23:50 22 sufficient to cover the situations that we were  
10:23:56 23 entering into. So again, a risk management opportunity

10:24:02 1 for me. Different than what I'm doing today.  
10:24:05 2 Nevertheless, it helps me bring relevance to what I'm  
10:24:09 3 doing today.

10:24:10 4 The third piece that I would call  
10:24:13 5 attention to is down the road in my later years, I  
10:24:17 6 helped with my brother, who was also an attorney, to  
10:24:21 7 run a law practice. And I had on my shoulders there  
10:24:27 8 making payroll every two weeks. And unless you've  
10:24:32 9 had to make payroll for 30 or more people every two  
10:24:37 10 weeks, you don't understand the responsibility that  
10:24:41 11 that entails.

10:24:43 12 And in doing that, we decided that we  
10:24:49 13 needed three months of operating expenses on hand  
10:24:53 14 because of the ebb and flow of our business. So  
10:24:57 15 again, there I was -- it seems to me I had in my mind  
10:25:01 16 the notion that reserves are important.

10:25:04 17 And the last thing that I would call  
10:25:06 18 attention to in my experience is after I finished my  
10:25:11 19 law practice, I developed land. I was in the  
10:25:16 20 construction business with the land development end  
10:25:19 21 of it. And there, the standard for building roads  
10:25:23 22 and building drainage system is using the 100-year  
10:25:30 23 flood plan. So that when you build something like --

10:25:34 1 when you constructed a road, you needed a large  
10:25:39 2 margin of safety. You were looking at storms that  
10:25:42 3 might occur once in 100 years. And that taught me  
10:25:51 4 that you needed a horizon that was a long horizon.  
10:25:54 5 And I would certainly do no less in the industry that  
10:25:56 6 I'm in now where if I'm considering people's lives  
10:25:59 7 and their health safeties -- and their health and  
10:26:05 8 their safety.

10:26:07 9           So all of the trustees bring -- the  
10:26:10 10 Board of Directors bring some relevant experience to  
10:26:14 11 the job that we undertake here. And I think at least  
10:26:17 12 that is helpful in all of the things that I do at LGC.

10:26:23 13           Q. In addition to the things that you've done  
10:26:25 14 on your own behalf in terms of your own businesses,  
10:26:28 15 have you also served on voluntary boards in addition  
10:26:31 16 to LGC that have given you some perspective on how  
10:26:34 17 organizations run?

10:26:35 18           A. Absolutely. I -- It would probably be odd  
10:26:40 19 if I listed all of the boards that I've served on.  
10:26:43 20 But I've taken a great interest in public education.  
10:26:48 21 I've served on a school board for more than 20 years  
10:26:53 22 continuously. Prior to that, I was on the Budget  
10:26:56 23 Committee, our town Budget Committee.

10:26:59 1                   And as part of my service on the  
10:27:03 2 School Board, I also was heavily involved with New  
10:27:06 3 Hampshire School Boards Association, was president of  
10:27:10 4 that organization in the past. I served on the Board  
10:27:13 5 of Directors of the New Hampshire Interscholastic  
10:27:16 6 Athletic Association, again, as part of my schooling  
10:27:19 7 experience.

10:27:19 8                   I've served on the State of New  
10:27:23 9 Hampshire State Council on The Arts, which is a whole  
10:27:25 10 different piece of my background, my interest in the  
10:27:29 11 arts, but certainly relevant to my interest in public  
10:27:36 12 education. So other boards, but it -- and then Local  
10:27:43 13 Government Center.

10:27:43 14           Q.     Just for the record, what is the political  
10:27:45 15 subdivision that you represent on whose behalf you  
10:27:49 16 serve on the board?

10:27:50 17           A.     The Hollis-Brookline Cooperative School  
10:27:54 18 District.

10:27:59 19           Q.     With regard to the LGC board itself, what  
10:28:02 20 particularly of its functions do you find particularly  
10:28:05 21 interesting, given your own particular experience?

10:28:08 22           A.     I'm a person who views process as -- I see  
10:28:18 23 things through the lens of process. I can call myself

10:28:22 1 a process geek. And I wouldn't have done that had I  
10:28:27 2 not sat down in this proceeding and figured out why I  
10:28:31 3 am that way. And so I just -- I want to explain why  
10:28:36 4 process is very important to me.

10:28:41 5 My first four years I was taught and  
10:28:45 6 I experienced life or death. I can do it right and  
10:28:50 7 I'm going to get through it. If I screw it up,  
10:28:53 8 there's a good chance that I'll kill myself. That  
10:28:56 9 was my Navy experience.

10:28:58 10 Then I went to law school. Three  
10:29:01 11 years I was educated on due process. From the first  
10:29:05 12 day to the last day there was due process every --  
10:29:11 13 embedded in everything I learned in law school. And  
10:29:13 14 then I lived it for 27 years.

10:29:15 15 So it turns out that process is -- is  
10:29:19 16 the lens through which I tend to view things, or one  
10:29:22 17 of the lenses.

10:29:23 18 Q. How do you feel about process in general as  
10:29:26 19 it is applied at LGC?

10:29:27 20 A. I couldn't be happier with it. And it's  
10:29:32 21 one of the reasons that I stick with LGC. And I've  
10:29:38 22 been on a lot of boards. I have seen bad process.  
10:29:42 23 But I think that there -- there is -- I have

10:29:49 1 experienced no better process than that at LGC. And  
10:29:54 2 if I could, I'd like to explain what I mean by that.

10:29:57 3 Q. Please do.

10:29:58 4 A. We have a board -- a very large board. And  
10:30:05 5 when I first came there, I shook my head and I said,  
10:30:08 6 How could this possibly work? 28 people, how are we  
10:30:13 7 going to get through a meeting? But they're very  
10:30:15 8 intelligent people, very committed people. And we  
10:30:21 9 listen to each other. So we have an excellent board.

10:30:26 10 Secondly, we have a committee  
10:30:28 11 structure. And everything starts out in our  
10:30:32 12 committee structure. So I've been a member of the  
10:30:35 13 Finance Committee since the beginning. All questions  
10:30:41 14 about finance come to that committee. We'll spend a  
10:30:48 15 morning on an issue, maybe two, but usually one issue.  
10:30:51 16 And we'll hear from our staff, we'll hear from our  
10:30:55 17 professionals.

10:30:57 18 And the process has always been that  
10:30:59 19 we don't speak until they give us the facts, the  
10:31:08 20 recommendations, all of the considerations. And when  
10:31:10 21 they've educated us in the subject matter, we then  
10:31:15 22 debate it. We push back. I've never been to a  
10:31:19 23 meeting that didn't include -- where our counsel

10:31:25 1 wasn't there, where our subject matter experts  
10:31:27 2 weren't there, and our excellent staff wasn't there.

10:31:31 3           So by the time it's my job -- and my  
10:31:35 4 job and the board's job is to make the decisions on  
10:31:39 5 our products and our pricing and all of the important  
10:31:44 6 decisions really that make up LGC -- I'm fully  
10:31:50 7 prepared.

10:31:50 8           So we get a committee recommendation.  
10:31:52 9 Then we go to the full board. And the committee  
10:31:58 10 chair will introduce the subject, talk about the  
10:32:02 11 process that's been followed, talk about the -- the  
10:32:10 12 committee's recommendation. Then the subject matter  
10:32:13 13 experts will talk and answer questions.

10:32:17 14           Then the board gets into it. And the  
10:32:21 15 board will debate back and forth. And we have -- one  
10:32:25 16 of the things I like about the big board is we have  
10:32:28 17 people of all stripes. We have people who will fight  
10:32:31 18 you tooth and nail. And we have very lively debates.  
10:32:36 19 And I very much enjoy that.

10:32:39 20           But when we finish, I feel that every  
10:32:45 21 corner of the state has been represented. We only  
10:32:49 22 come together -- I've come to know these people. But  
10:32:52 23 they're not close friends. I only see them at board

10:32:55 1 meetings. And by the time we've hashed -- gone through  
10:33:02 2 this process, whatever decision we make I feel is a  
10:33:08 3 solid decision. I feel we've really worked it over,  
10:33:11 4 allowed all opinions to be heard.

10:33:12 5 I'm not afraid of any opinion that's  
10:33:17 6 adverse in any way because if I offer an opinion --  
10:33:24 7 and I've done this -- that was heading off in the  
10:33:27 8 wrong direction, I'm met by my colleagues by total  
10:33:33 9 silence. And I very quickly understand that. That's  
10:33:37 10 not the direction we're heading in.

10:33:38 11 And that's the way we -- that's why  
10:33:41 12 28 of us can get through this process, make good  
10:33:44 13 decisions, and move on because we're intelligent, I  
10:33:50 14 think. We have the business backgrounds. We have  
10:33:53 15 good life experience. And we all eventually want to  
10:33:58 16 go home from the meeting. So we allow it to proceed  
10:34:01 17 to a conclusion.

10:34:02 18 So I couldn't be more pleased about  
10:34:05 19 process. And I can talk about bad process as well as  
10:34:08 20 good process. This is very good process.

10:34:11 21 Q. Does the board have a history of unanimous  
10:34:15 22 decisions on everything, or is there -- are there --  
10:34:18 23 do the minutes reflect some disagreement among the

10:34:21 1 board from time to time?

10:34:24 2 A. No. We frequently have disagreement.

10:34:29 3 And I mean, I haven't looked, but I would say with  
10:34:32 4 frequency, our decisions are not unanimous.

10:34:37 5 But I think we -- you know, if the  
10:34:39 6 issue is this wide, I think we very closely [sic] get  
10:34:44 7 to conversation that's this wide. And so if I win a  
10:34:49 8 point -- if my -- if my position prevails, you know,  
10:34:55 9 we might be here. But if I don't prevail, we're only  
10:35:00 10 here. We're not out here.

10:35:01 11 So I think we all go home quite  
10:35:04 12 comfortable with -- with the process that we followed.

10:35:11 13 Q. You mentioned the staff briefly.

10:35:13 14 A. Yes.

10:35:13 15 Q. What's the board's interaction with the  
10:35:15 16 staff? And more importantly, what's your opinion of  
10:35:20 17 the staff with whom you're dealing?

10:35:22 18 A. I couldn't think more of the staff.

10:35:26 19 Another reason why I just feel very comfortable.

10:35:30 20 I am not a subject matter expert in this business.

10:35:35 21 In fact, when I joined this business, I joined it

10:35:37 22 because -- that is, when I joined this board -- I

10:35:41 23 knew health insurance in particular was a big problem

10:35:45 1 in my district, and I wanted to learn more about it,  
10:35:48 2 and I wanted to see if I could do something about it.

10:35:52 3 And so we -- we just have an excellent  
10:35:58 4 staff. The people you are going to hear from, I trust  
10:36:03 5 completely. Sandal Keeffe, she reminds me of the  
10:36:13 6 advertisement you see with the -- the person with the  
10:36:17 7 suitcase with \$100,000 in it, and they -- I don't  
10:36:22 8 know if you know what I'm talking about -- but they  
10:36:24 9 give it to somebody to see if there's a -- if they --  
10:36:27 10 if that person will safe-keep that suitcase. I'd  
10:36:31 11 give Sandal Keeffe a suitcase with \$100,000 and tell  
10:36:36 12 her that I need to -- I'll be back in a month.

10:36:40 13 And what I would get back from her  
10:36:43 14 was not only the suitcase with the \$100,000, but I'd  
10:36:46 15 get interest on it. She would figure out -- it would  
10:36:49 16 kill her to just hold on to that suitcase. She'd get  
10:36:52 17 a return on the investment.

10:36:54 18 Q. And what's her role at LGC?

10:36:56 19 A. She's the chief financial officer. And  
10:36:59 20 Wendy Parker --

10:37:02 21 Q. What's her role?

10:37:02 22 A. She's -- I -- I can't give you her exact  
10:37:06 23 title, but she's essentially the operations person.

10:37:10 1 She knows all of the nuts and bolts of every program  
10:37:14 2 that we have. She's got a life experience -- In fact,  
10:37:18 3 she's come up through the company, completely through  
10:37:23 4 the company. And she knows everything there is to  
10:37:25 5 know about risk pools. She'd give me back the  
10:37:29 6 \$100,000, a suitcase, with pamphlets in it telling --  
10:37:37 7 that told me how to better manage the money than keep  
10:37:44 8 it in a suitcase. So she's the person that keeps  
10:37:49 9 us -- that handles the training in LGC among many  
10:37:53 10 other things. Top-notch.

10:37:58 11 Q. Any other staff? What about your executive  
10:38:02 12 director?

10:38:02 13 A. I helped hire our executive director. So  
10:38:09 14 I -- I saw the pool. She's got all of the qualities  
10:38:14 15 that our board wanted for an executive director.  
10:38:20 16 She sees the big picture. She oversees more than  
10:38:25 17 100 people. And that's a big -- that's a big deal.  
10:38:28 18 She oversees a board of almost 30. That's a big  
10:38:33 19 deal. She's an excellent people person. Her legal  
10:38:37 20 background, I think, helps her because there is a lot  
10:38:40 21 of legal stuff that occurs in our business.

10:38:45 22 So she has all of the qualities that  
10:38:48 23 I would want in an executive director. I'm absolutely

10:38:52 1 satisfied with her.

10:38:53 2 Q. How does this process, as you see it  
10:38:56 3 playing out at LGC, how does that compare with some  
10:38:59 4 of the other boards or entities on which you've served?

10:39:01 5 A. It rises way above them. Let me use the  
10:39:10 6 example of my school district. My school district  
10:39:19 7 for 3,000 kids has -- my SAU -- not my school  
10:39:24 8 district -- has three different school boards  
10:39:27 9 managing elementary education in Brookline,  
10:39:33 10 elementary education -- a second managing elementary  
10:39:37 11 education in Hollis and a third handling secondary  
10:39:39 12 education in the combined schools.

10:39:47 13 And it's dysfunctional. We have one  
10:39:49 14 superintendent with 17 School Board member bosses and  
10:39:53 15 17 Budget Committee bosses from three different  
10:39:59 16 districts, three different budget committees. We  
10:40:03 17 clearly should be unified. We all talk about it.  
10:40:05 18 We can't find the political will to get there.

10:40:09 19 So I've seen both sides of this. And  
10:40:12 20 the organization that we have at LGC, I totally endorse  
10:40:20 21 and stand behind.

10:40:21 22 Q. With regards to LGC's mission and purpose,  
10:40:27 23 how does that relate to you and how you envision your

10:40:35 1 role in serving members of LGC?

10:40:37 2 A. It's almost at the top of the list with our  
10:40:45 3 statutory requirements. But our -- my fiduciary  
10:40:56 4 responsibilities are to the mission and to managing  
10:40:56 5 the assets. That's what my fiduciary responsibilities  
10:40:58 6 are.

10:40:58 7 So our mission, to provide services  
10:41:01 8 and products to -- that help our members carry out  
10:41:09 9 their mission, that's what it's all about. That is  
10:41:11 10 our focus. We talk about that. We stay with that.  
10:41:17 11 Mission is critical.

10:41:18 12 Q. Let's talk about how some of those things  
10:41:21 13 are carried out. Without yet talking about the risk  
10:41:26 14 pools themselves and the reserves, what are some of  
10:41:30 15 the other things that LGC does? How about training?

10:41:33 16 A. Enormous effort in training and enormously  
10:41:40 17 important. And I've always backed it for the reasons  
10:41:43 18 that I've already given you because it was so  
10:41:48 19 important in my background. But risk management is  
10:41:54 20 what we're about. The best way to manage risk is to  
10:41:59 21 train to understand it and to mitigate it.

10:42:06 22 It's pretty obvious in policemen and  
10:42:11 23 firemen that that would be a big deal. It may be

10:42:15 1 less obvious in the healthcare industry, but it is a  
10:42:18 2 big deal there because our healthcare industry has --  
10:42:24 3 we've typically bought insurance, let our doctors  
10:42:28 4 make the decision, and we don't -- after we pay the  
10:42:30 5 premiums, we don't take ownership of it.

10:42:33 6 Training is all about taking ownership,  
10:42:37 7 particularly in the health business, of what's going  
10:42:40 8 on in your health. Absolutely critical to know that  
10:42:45 9 your habits, the way you manage your body is going to  
10:42:51 10 extend your life. Absolutely critical. That's the  
10:42:54 11 way -- the best way we can contain costs in the  
10:42:58 12 healthcare industry. So I am a big believer in  
10:43:02 13 training, have been all my life.

10:43:05 14 Q. Is this part of -- is this one of the  
10:43:07 15 components of something that LGC calls a totally  
10:43:11 16 integrated approach?

10:43:12 17 A. Yes. Yes.

10:43:14 18 Q. And how do you feel about that program and  
10:43:17 19 that approach to LGC's offerings?

10:43:22 20 A. About being under one roof with all of our  
10:43:26 21 risk management programs?

10:43:28 22 Q. Yes.

10:43:29 23 A. I'm just a strong supporter of that. I think

10:43:33 1 it's an excellent business model in terms of giving  
10:43:41 2 the best price. And it's the best way to manage all  
10:43:45 3 of the risks -- I guess the analogy that I would use  
10:43:52 4 is -- or the example I would use is I changed my  
10:43:56 5 house insurance not too long ago. And I was just  
10:44:00 6 going to change my house insurance.

10:44:01 7 But when I talked to the individual I  
10:44:03 8 was going to, he said, But if you bring me the  
10:44:06 9 rest -- So he gives me a price. You bring me your  
10:44:11 10 automobile, your boat, your excess coverage, your  
10:44:16 11 personal effects rider, if you bring me all of that,  
10:44:20 12 the combined pricing is going to be much better.  
10:44:23 13 I said, Show me. He did. It was much, much better.

10:44:27 14 Because we talked about earlier in  
10:44:31 15 this case the bigger -- the more people you have or  
10:44:39 16 the more -- the more risk you put under one umbrella,  
10:44:43 17 the better you contain it, the least -- you can  
10:44:47 18 control the cost better. There are just so many  
10:44:50 19 reasons why being under one -- one roof makes sense.

10:44:53 20 The example I gave you earlier about  
10:44:56 21 my school district having three silos and they  
10:45:03 22 have -- we all get -- have separate agendas. And  
10:45:06 23 when we come together, I don't know what the other

10:45:09 1 guy has been working on. And we just work at  
10:45:12 2 cross-purposes.

10:45:13 3           So having a silo approach to risk  
10:45:19 4 management, I think is absolutely the wrong way to go.  
10:45:24 5 It should be under one roof where we consider the  
10:45:28 6 totality of it, manage the risk the best, and price  
10:45:33 7 it the best.

10:45:35 8           Q. Has that actually had some impact with  
10:45:37 9 regards to pricing that your own school has sought in  
10:45:43 10 the past?

10:45:43 11           A. Adverse impact, absolutely, yes. We talk  
10:45:45 12 about that all the time. We talk about -- I mean, we  
10:45:52 13 order fuel oil together. But papers and books and  
10:45:55 14 pencils and dealing with different vendors, we're  
10:45:59 15 fighting with each other all the time over that.  
10:46:02 16 We have one superintendent, one business manager,  
10:46:08 17 attempting to keep -- to manage all of us. And it  
10:46:10 18 just does not work.

10:46:12 19           So yes, we talk about it. We know we  
10:46:16 20 should be under one roof. We can't find the  
10:46:18 21 political will to get there. It's a very strange  
10:46:20 22 circumstance.

10:46:21 23           Q. Let's move to the board's consideration of

10:46:25 1 reserves with regards to the risk pools themselves,  
10:46:28 2 which is a topic that you've heard discussed last  
10:46:32 3 week. What are some of the important considerations  
10:46:34 4 that you, as a board member, look at when considering  
10:46:38 5 an appropriate level of reserve, an appropriate level  
10:46:42 6 of capital adequacy for the pools?

10:46:45 7 A. One of the things that just totally  
10:46:50 8 disappointed me with the presentation last week was  
10:46:54 9 the lack of horizon in attempting to address the  
10:47:02 10 reserve issues. Talked about claims. We talked  
10:47:07 11 about incurred, but not reported claims. But we  
10:47:13 12 didn't talk about what is, to me, the most important  
10:47:18 13 piece, which is looking out at the horizon and making  
10:47:21 14 sure that we have a company that's protected.

10:47:24 15 So I -- that's -- that's where my  
10:47:28 16 focus is on the issue of reserves. And I can give  
10:47:37 17 you some of what goes on in my head.

10:47:41 18 Q. Well, that's why you're here, so . . .

10:47:44 19 A. Well, when -- when I deal with reserves,  
10:47:51 20 there's a whole -- there are a whole bunch of factors  
10:47:54 21 that weigh on me. I look out into the business  
10:48:02 22 world, and I see -- I've lived through two sessions  
10:48:07 23 where banks have failed in my life. Insurance

10:48:12 1 companies have failed. Recently we've all seen auto  
10:48:18 2 company bailouts.

10:48:20 3 Last week I heard -- I watched a  
10:48:23 4 report on Michigan, practically every city in  
10:48:28 5 Michigan's in receivership.

10:48:31 6 And most importantly, bringing it  
10:48:32 7 home, the New Hampshire Retirement System, which  
10:48:36 8 isn't -- has been important to me as a School Board  
10:48:38 9 member. So everything was fine with the New  
10:48:44 10 Hampshire Retirement System. It was a \$4 billion  
10:48:46 11 program. And I woke up one morning and was told it's  
10:48:49 12 \$2.4 billion underfunded.

10:48:52 13 So why am I bringing all of this up?  
10:48:54 14 Undercapitalization, it seems to me, is one of the  
10:48:57 15 biggest problems that we have in this country. And  
10:49:02 16 so my perspective is that this company is not going  
10:49:06 17 to fail on my watch. That I am going to be  
10:49:09 18 conservative and that I should be conservative. When  
10:49:16 19 I'm protecting -- when the weight on my shoulders is  
10:49:17 20 to make sure that there's a reserve level that's  
10:49:19 21 adequate on a horizon for 70,000 people, I am going  
10:49:25 22 to be conservative. I'm not going to undercapitalize  
10:49:29 23 this company.

10:49:30 1                   And let me -- let me continue on.  
10:49:33 2   Bringing it closer to the health insurance -- the  
10:49:37 3   health aspect of it. The flu season. Now, I've  
10:49:48 4   learned in my eight years that our end-of-the-year  
10:49:56 5   results can be highly affected just by the flu season.  
10:49:59 6   One year we had a particularly good year, and we  
10:50:04 7   asked Wendy Parker, you know, what went right for us.  
10:50:07 8   And one of the first things she said that I remember  
10:50:09 9   was, We had practically no flu season. And other  
10:50:17 10   years the flu season has gone poorly.

10:50:21 11                   And these are million-dollar responses  
10:50:24 12   that we're getting, multimillion-dollar responses,  
10:50:27 13   just on the flu.

10:50:28 14           Q.    Let me interrupt you just for a second.  
10:50:31 15   When you say you had a good flu season, what does  
10:50:34 16   that mean, specifically?

10:50:34 17           A.    It means that there was no flu -- the  
10:50:37 18   incidence of flu was very low. And that brought --  
10:50:42 19   meant millions of dollars to our bottom line. I was  
10:50:44 20   incredulous to find that out.

10:50:48 21                   But let me continue with my thoughts  
10:50:51 22   on that a little bit. I read history. So on the flu  
10:51:03 23   piece, the biggest pandemic that we've ever had was

10:51:06 1 at the end of World War I when the soldiers came back  
10:51:11 2 home and carried with them a mutated flu virus that  
10:51:17 3 killed 700,000 people in this country, 20 to 40  
10:51:20 4 million people across the world. That's influenza.

10:51:26 5           Since then -- so that's the biggest  
10:51:28 6 pandemic that we've ever had: flu. Since then, in  
10:51:33 7 the '50s we had the Asian flu, killed a lot of people  
10:51:37 8 in this country. We had Hong Kong flu. And most  
10:51:41 9 recently we've had the swine flu.

10:51:47 10           So I think about these things. I think  
10:51:49 11 I'm supposed to think about these things. I think I'm  
10:51:51 12 supposed to see that there's a reserve level that  
10:51:53 13 will -- that will handle whatever comes our way.

10:52:00 14           Let me just give one more example.  
10:52:02 15 I can keep going on this one. But let me talk about  
10:52:05 16 this Seabrook Nuclear Power Plant. I just read an  
10:52:11 17 article. They're trying to get relicensed.  
10:52:18 18 They're -- the concrete in the Seabrook Nuclear Power  
10:52:23 19 Plant has lost 22 percent of its strength. And they  
10:52:28 20 just discovered this.

10:52:29 21           So if that goes from 22 to 35, am I --  
10:52:31 22 does that relate to my health reserves? Well, I think  
10:52:34 23 it does. I've listened to what happened in Japan

10:52:38 1 last year when everything went wrong. And there was  
10:52:42 2 an enormous nuclear disaster. So I think I have to  
10:52:46 3 consider -- not that I think the world's going to  
10:52:53 4 fall apart, but it's important that I look out on a  
10:52:57 5 distant horizon when we're talking about reserves.

10:53:01 6 And let me just make one last point.  
10:53:03 7 We lost money at LGC, lost money seven times in the  
10:53:14 8 data that I've seen. And we lost money three years  
10:53:16 9 in a row: '95 through -- '95, '6, and '7. And we  
10:53:24 10 made money in two years and lost money again in the  
10:53:27 11 year 2000.

10:53:27 12 So my point is that you can't plan on  
10:53:30 13 a catastrophe that comes in for a year, is gone, and  
10:53:34 14 you're done with it. You could -- you could have a  
10:53:39 15 business downturn. You could lose money several  
10:53:43 16 years in a row. And you have to be prepared to  
10:53:45 17 sustain that business -- again, not through the short  
10:53:49 18 term, which is what I kept hearing about last week:  
10:53:54 19 the short term this, the short term that. Over the  
10:53:57 20 long term.

10:53:58 21 I think my job is to make sure that  
10:54:02 22 the risk pool that I'm involved with is around for a  
10:54:07 23 long, long time. And on my watch, that's the only

10:54:12 1 way I can fulfill my fiduciary responsibilities.

10:54:16 2 Q. In addition to your own thoughts on these  
10:54:18 3 matters, do you ever go to any conventions or  
10:54:21 4 anything where these topics come up?

10:54:22 5 A. I do. And -- I do. I've been to four  
10:54:27 6 national conventions. And they've been very  
10:54:33 7 important to me as a barometer. At these conventions  
10:54:39 8 are trustees from other risk pools and directors from  
10:54:46 9 other risk pools. And at every single one of those  
10:54:50 10 four conventions, the primary piece of conversation  
10:54:56 11 and -- was involved in every one of them was reserves.  
10:55:04 12 It's a common theme. So I can take the temperature  
10:55:07 13 of what's going on.

10:55:08 14 I've talked to people -- Now, I'm not  
10:55:11 15 a professional, but I've at least been able to take  
10:55:13 16 the temperature. I've talked to people from at least  
10:55:17 17 20 states, probably more, about their reserves  
10:55:21 18 situation, what they think about it, how they deal  
10:55:23 19 with it. And it -- it helps me know that I'm doing  
10:55:29 20 the right thing because they're -- the conversation  
10:55:32 21 with them -- I show up in Denver and we're all talking  
10:55:38 22 about the same thing. I'm not out in left field.

10:55:46 23 Q. Were you here last week to observe

10:55:48 1 Mr. Atkinson's testimony?

10:55:50 2 A. I was.

10:55:50 3 Q. Did you hear him suggest that a 95 percent  
10:55:54 4 confidence level in an RBC along the lines of 2.1  
10:55:58 5 would be a sufficient and adequate reserve level for  
10:56:02 6 LGC?

10:56:05 7 A. That's what I heard.

10:56:06 8 Q. And what's your reaction?

10:56:08 9 MR. VOLINSKY: Excuse me, your Honor.

10:56:09 10 THE PRESIDING OFFICER: Mr. Volinsky?

10:56:11 11 MR. VOLINSKY: I'd object if this is about  
10:56:12 12 to be an expert opinion because it's completely  
10:56:14 13 undisclosed.

10:56:15 14 THE PRESIDING OFFICER: Understood.

10:56:17 15 Mr. Saturley?

10:56:19 16 MR. SATURLEY: This is a member of the  
10:56:20 17 Board of Directors who's been accused of unethical,  
10:56:24 18 unscrupulous, and basically negligent behavior. I  
10:56:27 19 asked him for his reaction as a board member to some  
10:56:30 20 testimony and a suggested RBC level. I'm not asking  
10:56:34 21 him for an opinion of what is the appropriate. I'm  
10:56:37 22 asking him for his board member reaction. He's the  
10:56:40 23 one responsible for making that decision. I think he

10:56:42 1 should be allowed to testify how he goes about  
10:56:45 2 thinking about that decision.

10:56:46 3 THE PRESIDING OFFICER: Your objection is  
10:56:48 4 denied, Mr. Volinsky. We'll let it run for a little  
10:56:52 5 bit longer, and I'll assign it appropriate weight.

10:56:55 6 MR. SATURLEY: Thank you.

10:56:58 7 Q. BY MR. SATURLEY: You can go ahead.

10:57:02 8 A. The best I can say is if Mr. Atkinson were  
10:57:09 9 an actuary and those were our policies, I do not  
10:57:11 10 think I could serve on that Board of Directors.  
10:57:13 11 I do not think I could fulfill my fiduciary  
10:57:16 12 responsibilities. They would be taken away from me.  
10:57:20 13 And if they're taken away from me, then I can't stand  
10:57:23 14 behind those policies and serve the 70,000 health  
10:57:31 15 members that I serve.

10:57:35 16 Q. What is the process that the board goes  
10:57:39 17 through when it determines the level that it believes  
10:57:44 18 is the -- when it selects a capital adequacy level on  
10:57:49 19 a yearly basis? What's the process that it goes  
10:57:52 20 through?

10:57:52 21 A. It's different. I mean, there have been  
10:57:59 22 years where we've -- where we've had retreats on that  
10:58:03 23 issue, centered around that issue. I have a long

10:58:09 1 presentation on risk-based capital that I kept and  
10:58:14 2 looked at any number of times.

10:58:17 3 But we -- we look at a lot of things.  
10:58:23 4 We talk about some of the things that I've been  
10:58:25 5 talking about. We talk about obviously where we are.  
10:58:33 6 We talk about the surplus that we may or may not have  
10:58:40 7 and how to return that in the best interests of our  
10:58:46 8 members.

10:58:49 9 Of course, we listen to -- to Peter  
10:58:56 10 Riemer and our experts. And there's a thorough  
10:59:00 11 conversation on it.

10:59:01 12 Q. Who's Peter Riemer?

10:59:02 13 A. Peter Riemer's our actuary.

10:59:04 14 Q. Is it fair to say that this topic of  
10:59:07 15 capital adequacy is hashed out on a thoroughly -- on  
10:59:10 16 a thorough basis?

10:59:11 17 A. It's -- it's one of the more ongoing topics  
10:59:17 18 in my eight years. It's always there. Every meeting,  
10:59:26 19 our RBC level is reported. Sometimes we talk about  
10:59:28 20 it; sometimes we don't. I mean every meeting. But  
10:59:31 21 it's always in the front of our minds.

10:59:33 22 Q. You mentioned a statute at some point  
10:59:37 23 earlier in your testimony. Is the statute and your

10:59:41 1 statutory obligations gone over with the board at any  
10:59:45 2 point?

10:59:45 3 A. Yes. RSA 5-B. Every year, our attorney,  
10:59:54 4 who has always been -- we now have David Frydman as  
10:59:58 5 our in-house counsel, but I've never been to a  
11:00:02 6 meeting without our legal counsel present. Annually  
11:00:10 7 our attorney goes over 5-B with us and reviews our  
11:00:13 8 fiduciary responsibilities. So that happens annually.

11:00:18 9 Q. Does he discuss with you the portions of  
11:00:23 10 5-B that talk about returning surplus?

11:00:25 11 A. Yes.

11:00:26 12 Q. And so you are aware of those and the board  
11:00:29 13 is aware of those when it discusses the capital  
11:00:32 14 adequacy level that it seeks to determine?

11:00:35 15 A. Absolutely.

11:00:35 16 Q. Turning back to Peter Riemer for a minute,  
11:00:43 17 there has been some suggestion last week that some of  
11:00:46 18 the consultants at LGC may have been around too long.

11:00:49 19 Did you hear that?

11:00:50 20 A. I did.

11:00:50 21 Q. What's your reaction?

11:00:58 22 A. I think length of service is something I  
11:01:04 23 should consider, but it is certainly not determinative.

11:01:07 1 In the case of Peter Riemer, I've had a chance to  
11:01:10 2 evaluate him over eight years. For me, he's the  
11:01:16 3 North Star. And by that I mean he's always at the  
11:01:22 4 same place. So if I'm going to deviate from Peter  
11:01:25 5 Riemer, I know what I'm deviating from.

11:01:32 6 Why would I want to replace somebody  
11:01:34 7 who I've had a chance to evaluate on an annual basis?  
11:01:38 8 He gives us his recommendations, and then I get to  
11:01:40 9 see how they play out.

11:01:42 10 So if I thought Peter Riemer wasn't  
11:01:45 11 right on the dime and pointed me at north every  
11:01:50 12 single time -- and that's what I want from him.  
11:01:53 13 I want consistency.

11:01:55 14 As a matter of fact, I want --  
11:01:57 15 Mr. Atkinson gave me exactly the recommendation that  
11:02:00 16 I would want to keep Peter Riemer. He's reasonable  
11:02:04 17 and he's conservative. I wouldn't change him.

11:02:09 18 Q. You've been on the board for eight years?

11:02:11 19 A. Yes, sir.

11:02:12 20 Q. Do you look forward to continuing service  
11:02:16 21 on the board?

11:02:16 22 A. Yes.

11:02:16 23 Q. And what's the principles that you'll be

11:02:20 1 adhering to with regards to your continued service on  
11:02:25 2 the board?

11:02:31 3 A. Well, I'll be adhering to 5-B and my  
11:02:35 4 fiduciary responsibilities. I'll continue to -- to  
11:02:38 5 highly value process. I mean, moving forward, I  
11:02:48 6 would -- I would continue exactly what we've done in  
11:02:51 7 the past.

11:02:52 8 Now, I'm certainly -- I'm not trying  
11:02:56 9 to be strident. I wish that I could have conversations  
11:03:02 10 with the Bureau about what they think. And I wish  
11:03:08 11 they knew before today what I thought. Because we  
11:03:14 12 can talk about differences. And we can resolve  
11:03:17 13 differences. This is the first time that I've talked  
11:03:20 14 to anybody -- that anybody's cared about what I have  
11:03:25 15 to say on this issue. That's troubling to me.

11:03:29 16 Q. And continuing your service, will you  
11:03:34 17 continue to take the long horizon with regards to  
11:03:37 18 your service and your duties as a board member?

11:03:40 19 A. It's the only way that I can continue. And  
11:03:44 20 I think that -- I really believe that if we're --  
11:03:53 21 reserves are our foundation. And that's -- I have to  
11:04:00 22 begin there.

11:04:01 23 If you take that 30 away from me and

11:04:05 1 I can't in my own head justify that my members are  
11:04:09 2 protected, then I can't serve. I cannot serve. And  
11:04:14 3 I will not.

11:04:15 4 MR. SATURLEY: Thank you, Mr. Enright.

11:04:17 5 Mr. Mitchell, I have no further  
11:04:19 6 questions for this witness.

11:04:19 7 THE PRESIDING OFFICER: Thank you,  
11:04:20 8 Mr. Saturley.

11:04:21 9 Mr. Volinsky, will it be you that  
11:04:26 10 does the cross-examination?

11:04:26 11 MR. VOLINSKY: It will be me if the other  
11:04:27 12 respondents . . .

11:04:27 13 THE PRESIDING OFFICER: Yes. You're right.  
11:04:29 14 Let's go back. How have the -- we have discussed,  
11:04:32 15 how have the respondents decided to put their  
11:04:35 16 cases-in-chief in? Is this going to be integrated?

11:04:39 17 MR. SATURLEY: It will be an integrated  
11:04:41 18 approach, right?

11:04:44 19 MR. GORDON: Yes.

11:04:45 20 MR. SATURLEY: By and large. Mr. Mitchell,  
11:04:47 21 having said that, there will be one or two witnesses  
11:04:49 22 where there may be different approaches and people  
11:04:52 23 will want to say things. But by and large, we are

11:04:55 1 trying to speed the process along and we will try to  
11:04:58 2 keep the, you know, different questioning to a bare,  
11:05:03 3 bare minimum.

11:05:04 4 THE PRESIDING OFFICER: Thank you,  
11:05:05 5 Mr. Saturley.

11:05:05 6 Then Mr. Gordon, do you agree?

11:05:09 7 MR. GORDON: Yes.

11:05:10 8 THE PRESIDING OFFICER: And Mr. Howard?

11:05:12 9 MR. HOWARD: Yes.

11:05:12 10 THE PRESIDING OFFICER: All right. Thank  
11:05:13 11 you. Given that, who would be next to ask direct and  
11:05:17 12 then we can cross-examine at the end of it all?

11:05:20 13 MR. VOLINSKY: Do you have anything?

11:05:22 14 MR. HOWARD: It's you.

11:05:23 15 MR. VOLINSKY: It's me.

11:05:25 16 THE PRESIDING OFFICER: All right.

11:05:26 17 Mr. Gordon and Mr. Howard are waiving direct  
11:05:28 18 testimony at this time?

11:05:28 19 MR. GORDON: Well, if it would be cross-  
11:05:30 20 examination then I have no cross-examination at this  
11:05:32 21 point in time.

11:05:33 22 THE PRESIDING OFFICER: Okay. So you're  
11:05:36 23 not calling Mr. Enright in your case?

11:05:39 1 MR. GORDON: I'm adopting his -- Yes.

11:05:41 2 THE PRESIDING OFFICER: I understand. Nor  
11:05:43 3 are you, Mr. Howard?

11:05:44 4 MR. HOWARD: Correct.

11:05:44 5 THE PRESIDING OFFICER: All right.

11:05:45 6 Mr. Volinsky, we're back to you.

11:05:46 7 MR. VOLINSKY: Thank you, sir.

11:05:48 8 THE PRESIDING OFFICER: Around the horn.

11:05:57 9 CROSS-EXAMINATION

11:05:57 10 BY MR. VOLINSKY:

11:05:57 11 Q. Good morning, Mr. Enright.

11:05:59 12 A. Good morning.

11:06:00 13 Q. You've testified that you, in the last  
11:06:05 14 eight years, were either a party to every decision  
11:06:08 15 involved in this dispute or you support the decisions  
11:06:12 16 that were made slightly before you joined the board;  
11:06:17 17 is that right?

11:06:17 18 A. Yes, sir.

11:06:17 19 Q. So I take it then you have no dispute with  
11:06:20 20 the idea that your entity was registered in Delaware  
11:06:24 21 for some period of time; is that right?

11:06:27 22 A. That's -- No, I have no dispute. That's  
11:06:37 23 something that wasn't on my radar scope.

11:06:41 1 Q. So now I'm putting it on your radar scope.  
11:06:45 2 Do you agree with me that it violated 5-B, were your  
11:06:52 3 entities to be registered in Delaware?

11:06:57 4 MR. SATURLEY: Objection. It  
11:06:59 5 mischaracterizes actual facts and he's not been  
11:07:01 6 tendered as a legal expert.

11:07:03 7 THE PRESIDING OFFICER: All right. First  
11:07:05 8 basis, would you restate the first basis about --

11:07:09 9 MR. SATURLEY: There's been no testimony  
11:07:12 10 and I believe no legal conclusion that the  
11:07:17 11 characterization that Mr. Volinsky put on it is a  
11:07:21 12 legal conclusion that it somehow violated 5-B. I don't  
11:07:24 13 think that's been established. I don't believe that  
11:07:25 14 that's Mr. Enright's understanding. And . . .

11:07:28 15 THE PRESIDING OFFICER: Okay. And I  
11:07:29 16 understand the second ground.

11:07:31 17 Mr. Volinsky?

11:07:33 18 MR. VOLINSKY: I thought I was asking if he  
11:07:34 19 agreed that it was improper to be registered in  
11:07:37 20 Delaware.

11:07:38 21 THE PRESIDING OFFICER: Okay.

11:07:39 22 MR. SATURLEY: That's not how I heard the  
11:07:42 23 question.

11:07:42 1 THE PRESIDING OFFICER: Is that question  
11:07:44 2 permissible? Well, then I won't leave it with you  
11:07:47 3 any longer, Mr. Saturley. Your objection on your  
11:07:51 4 first ground is granted.

11:07:54 5 And Mr. Volinsky, would you phrase  
11:07:57 6 that question differently, please.

11:07:59 7 MR. VOLINSKY: Sure.

11:08:01 8 Q. BY MR. VOLINSKY: You understand that the  
11:08:02 9 predecessor entities to LGC were at one time registered  
11:08:05 10 in Delaware, correct?

11:08:07 11 A. I understand that now.

11:08:09 12 Q. And do you agree or disagree that it was  
11:08:14 13 improper for those entities under RSA 5-B to be  
11:08:21 14 registered in Delaware?

11:08:23 15 MR. SATURLEY: I don't agree that that's  
11:08:25 16 the state of the facts, so I must --

11:08:27 17 THE PRESIDING OFFICER: Well, we'll let the  
11:08:29 18 record speak, but I'm going to let you continue,  
11:08:31 19 Mr. Volinsky.

11:08:31 20 THE WITNESS: I can't offer an opinion on  
11:08:32 21 that. I'm not sitting here as an attorney and I --  
11:08:38 22 the first thing I do if -- when asked that question  
11:08:42 23 is turn to my attorney and ask for an opinion, and

11:08:47 1 then I perhaps could respond. But I can't respond as  
11:08:50 2 I sit here.

11:08:55 3 Q. BY MR. VOLINSKY: Do you understand that  
11:08:56 4 currently HealthTrust is organized in an LLC?

11:08:59 5 A. Yes.

11:09:07 6 Q. And as an LLC, do you understand that  
11:09:11 7 HealthTrust does not have a set of bylaws of its own?

11:09:15 8 A. Again, that's off my radar scope. And I  
11:09:23 9 honestly can't respond to it.

11:09:25 10 Q. That's fair. Perfectly appropriate for you  
11:09:29 11 to tell me you can't respond if that's your position.

11:09:31 12 As an LLC, do you understand that  
11:09:33 13 HealthTrust does not currently have its own Board of  
11:09:40 14 Directors?

11:09:40 15 A. I'm sorry. I'm not trying to be contentious,  
11:09:48 16 but I can't respond to that one either.

11:09:50 17 Q. That's fine.

11:09:52 18 THE PRESIDING OFFICER: I don't think  
11:09:53 19 "contentious" is the proper word, Mr. Enright. Just  
11:09:57 20 listen carefully to the question.

11:10:00 21 Q. BY MR. VOLINSKY: You say that when an  
11:10:05 22 issue comes up, you often turn to counsel and receive  
11:10:09 23 advice if it happens to be a legal issue at the LGC.

11:10:14 1 Is that right?

11:10:14 2 A. Absolutely.

11:10:15 3 Q. Do you depend on your counsel to give ethical  
11:10:19 4 advice?

11:10:22 5 A. In the past we have had counsel give ethical  
11:10:29 6 advice.

11:10:29 7 Q. Do you depend on your counsel to act  
11:10:33 8 ethically in giving advice?

11:10:35 9 A. Of course I do.

11:10:37 10 Q. And does that include having your counsel  
11:10:40 11 avoid conflicts of interest?

11:10:42 12 A. Of course.

11:10:43 13 Q. Are you aware -- Well, I guess you were in  
11:10:48 14 court the other day when Mr. Andrews testified --  
11:10:52 15 actually, he testified on multiple days. Were you  
11:10:54 16 present for all of them?

11:10:55 17 A. Yes, sir. Every minute of it.

11:10:57 18 Q. And did you hear Mr. Andrews describe that  
11:11:00 19 when the Joint Competition Committee was formed,  
11:11:06 20 HealthTrust had its own set of issues which were  
11:11:08 21 different from Workers' Comp Trust, which were  
11:11:10 22 different from Property-Liability Trust? Did you  
11:11:17 23 hear that?

11:11:18 1 A. I did.

11:11:18 2 Q. And did you hear that each one of those  
11:11:20 3 entities with differing interests, each had the same  
11:11:24 4 lawyer: Robert Lloyd?

11:11:31 5 A. I -- I would have to say I wasn't paying  
11:11:34 6 close attention to that -- that piece.

11:11:39 7 Q. All right. I'll forego it.

11:11:46 8 All of the decisions that have been  
11:11:47 9 made during your time on the board are decisions that  
11:11:50 10 you support?

11:11:51 11 A. Yes, sir.

11:11:51 12 Q. So you support the lengthy multiple rounds  
11:11:56 13 of litigation against the firefighters?

11:11:59 14 A. I think that a good part of it was justified.  
11:12:23 15 I'm probably not -- I think a good part of it was  
11:12:31 16 justified.

11:12:31 17 Q. In this case, this enforcement proceeding,  
11:12:36 18 you've issued press releases; have you not?

11:12:40 19 A. Me?

11:12:40 20 Q. Quoting you?

11:12:42 21 A. Yes. Yes.

11:12:44 22 Q. Issued by the Local Government Center?

11:12:46 23 A. Yes. Yes, that's true.

11:12:48 1 Q. And in some of those quotes, you've  
11:12:53 2 asserted that the Local Government Center spent more  
11:12:56 3 than \$1 million defending this case?

11:12:59 4 A. That by the time we reached the end of  
11:13:05 5 this, it's going to be a number in that range. Very  
11:13:10 6 disappointing.

11:13:11 7 Q. So it's not currently a million?

11:13:14 8 A. I don't know what it is currently. I mean,  
11:13:15 9 I don't know if you're saying through this hearing or  
11:13:17 10 up to the hearing. But I have seen all of the bills.  
11:13:22 11 They are approved by the Board of Directors. And  
11:13:25 12 they are substantial.

11:13:31 13 Q. How much money was spent on the two rounds  
11:13:32 14 of firefighter litigation?

11:13:34 15 A. I don't know the answer to that.

11:13:35 16 Q. Can you estimate it?

11:13:36 17 A. I cannot.

11:13:36 18 Q. A large number?

11:13:37 19 A. I have no knowledge of those numbers.

11:13:43 20 Q. No clue?

11:13:44 21 MR. GORDON: Objection, your Honor.

11:13:44 22 THE PRESIDING OFFICER: Mr. Gordon, please  
11:13:45 23 come forward to the microphone.

11:13:48 1 MR. GORDON: I'm not precisely sure what  
11:13:49 2 the relevance is of this questioning going forward.  
11:13:54 3 I think the questions have been asked/answered. And  
11:13:57 4 I think Mr. Volinsky should move on. So I object to  
11:14:00 5 the relevance.

11:14:01 6 THE PRESIDING OFFICER: I'm going to deny  
11:14:03 7 it on relevance, but I'm going to ask Mr. Volinsky  
11:14:06 8 not to be argumentative. And if you want to -- Okay,  
11:14:12 9 Mr. Volinsky?

11:14:13 10 MR. VOLINSKY: Yes.

11:14:13 11 THE PRESIDING OFFICER: So go ahead.

11:14:14 12 Q. BY MR. VOLINSKY: Did you believe that the  
11:14:15 13 fees spent in the firefighter litigation were prudently  
11:14:18 14 spent?

11:14:19 15 A. I'm -- I can't comment on that. I'm not  
11:14:22 16 aware of the total amount of . . .

11:14:25 17 Q. No. I'm accepting you can't remember the  
11:14:28 18 amount. Whatever the amount, did you think that  
11:14:30 19 expenditure was prudent?

11:14:36 20 A. Again, I don't know how I can answer a  
11:14:38 21 question as to prudence if I don't know what I'm  
11:14:40 22 talking about. I don't know the amount.

11:14:41 23 Q. Before the firefighters litigation, did you

11:14:44 1 know that Mr. Andrews himself had used the Right To  
11:14:50 2 Know Law against Primex?

11:14:51 3 A. I did not know that.

11:14:56 4 Q. When I mention an RBC of 4.2, do you know  
11:15:06 5 what I'm talking about?

11:15:07 6 A. Absolutely.

11:15:08 7 Q. The RBC of 4.2, who first suggested that as  
11:15:18 8 the appropriate number?

11:15:22 9 A. I heard that it was -- that it was  
11:15:26 10 Mr. Riemer. But quite honestly, my recollection of  
11:15:28 11 that would have been different.

11:15:33 12 Q. You're the witness, so let me ask your  
11:15:35 13 recollection. Who selected 4.2?

11:15:37 14 A. I don't --

11:15:40 15 MR. SATURLEY: Different question.

11:15:42 16 Q. BY MR. VOLINSKY: Who suggested 4.2, first  
11:15:45 17 suggested it?

11:15:45 18 A. I don't -- I don't know who first -- first  
11:15:51 19 suggested it. I know how we got to 4.2. So that I  
11:15:56 20 could speak to. I'm not even sure that I was there  
11:16:01 21 when the 4.2 first came to light. I don't think I  
11:16:08 22 was. July of 2004 was --

11:16:13 23 Q. When you started?

11:16:14 1 A. -- was my beginning.

11:16:20 2 Q. So as you sit here today, based on your  
11:16:22 3 recollection, you don't know who the first to suggest  
11:16:24 4 4.2 was?

11:16:25 5 A. I don't. I don't believe I was involved  
11:16:27 6 in --

11:16:28 7 Q. That's fine.

11:16:29 8 A. I don't think I was at the organization then.

11:16:31 9 Q. You used an analogy of providing Ms. Keeffe  
11:16:40 10 with a suitcase of \$100,000 in cash, and you described  
11:16:44 11 how she'd hold it, give it back to you with interest?

11:16:47 12 A. I did.

11:16:47 13 Q. In some ways, HealthTrust has allowed  
11:16:53 14 Workers' Comp to hold over \$17 million in cash; has  
11:16:58 15 it not?

11:16:59 16 A. I don't view it that way.

11:17:05 17 Q. Do you agree with me that HealthTrust has  
11:17:07 18 subsidized Workers' Comp to the tune of over  
11:17:11 19 \$17 million?

11:17:18 20 A. I wouldn't use the word "subsidized," but  
11:17:22 21 generally I agree with that.

11:17:23 22 Q. What word would you use?

11:17:24 23 A. You want a single word?

11:17:28 1 Q. Yes.

11:17:31 2 A. I'm sorry. I'm sorry, it's a conversation,  
11:17:34 3 which I'd be happy to have. But the Workers' Comp  
11:17:41 4 piece is a long conversation. And I'd be happy to  
11:17:46 5 give you my recollection of it if you wish.

11:17:55 6 Q. In June of 2011, your board adopted a  
11:17:58 7 resolution to record the money transferred from  
11:18:01 8 HealthTrust to Workers' Comp in a note --

11:18:05 9 A. Yes.

11:18:05 10 Q. -- did it not?

11:18:06 11 A. Yes.

11:18:07 12 Q. And that note was in the amount of  
11:18:10 13 \$17.1 million?

11:18:11 14 A. Yes.

11:18:12 15 Q. And your board, at the time it adopted the  
11:18:18 16 note, intended Workers' Comp to repay the \$17.1 million  
11:18:26 17 note, correct?

11:18:27 18 A. Over the long horizon, that was the intent.

11:18:33 19 Q. Is that still --

11:18:34 20 A. That is still the intent. Thank you. I was  
11:18:36 21 going to say it was and it is.

11:18:38 22 Q. And the long horizon, that note doesn't  
11:18:40 23 have a repayment schedule, does it?

11:18:41 1 A. No, it doesn't.

11:18:46 2 Q. It doesn't even have a date for the first  
11:18:48 3 payment to be made, does it?

11:18:50 4 A. No. You have to be viable in making money  
11:18:56 5 before you can make payments. And that was the  
11:18:59 6 conversation. That was understood. So that's why we  
11:19:02 7 didn't put a beginning and an ending on that note.

11:19:05 8 Q. And the note -- I think I said it, but in  
11:19:09 9 case I didn't -- that was adopted June of '11, right?

11:19:14 10 A. I'm trusting your representation. I haven't  
11:19:18 11 seen that note in a long time.

11:19:21 12 Q. We're now in May of '12. There haven't  
11:19:24 13 been any payments?

11:19:25 14 A. No.

11:19:26 15 Q. There are none specifically scheduled?

11:19:29 16 A. No.

11:19:30 17 Q. And that's because you have to wait for  
11:19:32 18 Workers' Comp to be financially viable to make the  
11:19:35 19 payments?

11:19:35 20 A. That is correct.

11:19:36 21 Q. And by saying that and by acknowledging  
11:19:39 22 that there aren't payments being made, wouldn't you  
11:19:43 23 agree with me that Workers' Comp is not currently

11:19:46 1 financially viable?

11:19:49 2 A. Yes.

11:19:50 3 Q. And you don't have a date in mind by which  
11:19:55 4 Workers' Comp will become financially viable, do you?

11:19:59 5 A. Not -- not entirely accurate. We -- we  
11:20:07 6 have had actuarial advice and presentation that shows  
11:20:14 7 us that we are getting closer and closer to viability  
11:20:17 8 and that viability is actually closer than we  
11:20:21 9 originally thought it would be. So -- so we've kept  
11:20:27 10 in touch with this issue. And we are getting closer  
11:20:31 11 to viability faster than we thought we would. So  
11:20:36 12 from my perspective, the signs have been positive.

11:20:39 13 Q. What's the projected date of financial  
11:20:42 14 viability for Workers' Comp?

11:20:45 15 A. That's a question that Wendy -- the first  
11:20:48 16 person I'd ask is Wendy Parker.

11:20:50 17 Q. Do you have even a year or a decade in mind  
11:20:54 18 when it will be --

11:20:55 19 A. I would ask --

11:20:56 20 Q. Well, let me just finish the question and  
11:20:58 21 then you can tell me --

11:21:01 22 A. I'm sorry.

11:21:02 23 Q. -- whoever you want me to ask.

11:21:04 1 As you sit here today, as chairman of  
11:21:05 2 the board -- chairman of the board -- do you have the  
11:21:08 3 ability to even suggest to me in which decade the  
11:21:12 4 Workers' Comp program will be financially viable?  
11:21:17 5 You personally?

11:21:18 6 A. I would if you followed the process that I  
11:21:22 7 always follow at LGC, which is I start with -- with  
11:21:27 8 the -- our advisors, go to our experts, then I speak.  
11:21:34 9 So I've been given that information. I can't -- I've  
11:21:37 10 been given the information that shows when we think  
11:21:39 11 we'll be viable. I haven't looked at it in quite  
11:21:42 12 some time. I can't recall it now.

11:21:44 13 Q. So your point is that you know the decade;  
11:21:49 14 you just can't remember which decade?

11:21:50 15 A. Again --

11:21:53 16 THE PRESIDING OFFICER: Mr. -- Excuse me.  
11:21:57 17 You don't have to answer that question.

11:21:58 18 Move on, Mr. Volinsky.

11:22:00 19 Q. BY MR. VOLINSKY: The \$17 million that's  
11:22:03 20 not currently being paid against --

11:22:06 21 A. Um-hum.

11:22:06 22 Q. -- no interest charged, right?

11:22:09 23 A. We've already established that. Yes.

11:22:11 1 Q. It's a no-interest loan?

11:22:13 2 A. Yes.

11:22:17 3 Q. So unlike Ms. Keeffe, who would pay you  
11:22:22 4 interest for holding your suitcase --

11:22:23 5 THE PRESIDING OFFICER: Mr. Gordon.

11:22:25 6 MR. GORDON: I think it's been asked and  
11:22:26 7 answered. I think it's argumentative. And I object.

11:22:29 8 THE PRESIDING OFFICER: Going to grant that  
11:22:31 9 objection, Mr. Gordon.

11:22:32 10 Please continue, Mr. Volinsky. And  
11:22:34 11 that's two notices, if you will.

11:22:41 12 Q. BY MR. VOLINSKY: You said earlier that you  
11:22:42 13 were a process geek?

11:22:43 14 A. I did.

11:22:44 15 Q. Process requires, does it not, honesty and  
11:22:50 16 accuracy?

11:22:51 17 A. Absolutely.

11:22:53 18 Q. Without honesty and accuracy, process alone  
11:22:59 19 doesn't mean much, does it?

11:23:00 20 A. Honesty and accuracy are important to  
11:23:03 21 process.

11:23:03 22 Q. From time to time, the Local Government  
11:23:13 23 Center issues press statements; does it not?

11:23:16 1 A. Sure.

11:23:16 2 Q. And press statements have been issued about  
11:23:19 3 this case, correct?

11:23:22 4 A. Yes.

11:23:22 5 Q. And those press statements in some large  
11:23:27 6 measure have quoted you, correct?

11:23:32 7 A. You've asked me that and I've answered that  
11:23:35 8 I have been quoted.

11:23:36 9 Q. And in issuing press statements that quote  
11:23:41 10 you so that you're in the text of the press statement,  
11:23:45 11 do you make some effort to ensure that the press  
11:23:49 12 statements, particularly the ones that quote you  
11:23:51 13 about this case, are honest and accurate?

11:23:53 14 A. I think I read every -- I believe I've read  
11:23:58 15 the quotes that have been attributed to me.

11:24:01 16 Q. But I mean the entirety of the press  
11:24:03 17 statement in which you're quoted, do you read the  
11:24:06 18 entirety?

11:24:10 19 A. I believe I do.

11:24:11 20 Q. In a press statement in April, you  
11:24:15 21 recounted how the Local Government Center is spending  
11:24:18 22 more than \$1 million in defending this case?

11:24:21 23 A. Yes.

11:24:21 1 Q. And in that same press statement, you told  
11:24:26 2 the readers of the press statement that the Local  
11:24:29 3 Government Center had liability insurance for that  
11:24:33 4 \$1 million; did you not?

11:24:35 5 A. I would disagree that I said that we had  
11:24:39 6 liability insurance for that \$1 million. I would  
11:24:43 7 suspect that I said that we had liability insurance.

11:24:45 8 Q. Is it relevant in some way other than for  
11:24:48 9 the \$1 million? Do you need the press statement,  
11:24:51 10 first of all?

11:24:52 11 A. Well, that would certainly be helpful.

11:24:54 12 Q. That's why I asked. Let me give you  
11:24:57 13 Exhibit 28. It will be in Book 1. Just turn to the  
11:25:07 14 tab.

11:25:52 15 Tell me how to get rid of that menu.  
11:26:00 16 There we go. Exhibit 28. Are you with me?

11:26:08 17 A. Yes, sir. I'm a slow reader. I'm still  
11:26:11 18 looking at it.

11:26:12 19 Q. You just look up when you've read the page.

11:26:15 20 A. Sure. Okay. I'm ready.

11:26:37 21 Q. Fourth paragraph, that's where the press  
11:26:41 22 statement says, "The LGC, like all responsible  
11:26:44 23 nonprofit organizations, carries liability insurance."

11:26:47 1 Do you see where I am?

11:26:48 2 A. I am -- I do.

11:26:50 3 Q. Very next sentence, "In contrast, money  
11:26:53 4 spent on external lawyers, investigators, and such by  
11:26:55 5 the BSR and the Secretary of State . . . comes from  
11:27:02 6 the State's budget." So this is a reference to  
11:27:05 7 liability insurance as a contrast to the money coming  
11:27:08 8 directly from either the BSR or the Secretary for  
11:27:14 9 external lawyers, et cetera; isn't that right?

11:27:17 10 A. I'm not following you. I believe this to  
11:27:19 11 be accurate.

11:27:20 12 Q. As a matter of fact, at the time that this  
11:27:23 13 press statement was issued, you knew, did you not,  
11:27:27 14 that all of the relevant carriers had denied coverage  
11:27:34 15 to the Local Government Center regarding this dispute?

11:27:38 16 MR. SATURLEY: That's a misrepresentation  
11:27:40 17 and so, therefore, I object to the line of the  
11:27:42 18 questioning and I object to relevancy altogether.

11:27:48 19 THE PRESIDING OFFICER: Okay. What is the  
11:27:49 20 basis of your information, Mr. Volinsky?

11:27:51 21 MR. VOLINSKY: The Local Government Center  
11:27:52 22 has filed multiple lawsuits against its carriers,  
11:27:56 23 challenging the decisions not to provide coverage,

11:28:00 1 and those lawsuits have been removed to Federal Court,  
11:28:04 2 so I've actually read the pleadings on the PACER  
11:28:07 3 system.

11:28:09 4 THE PRESIDING OFFICER: Mr. Saturley, on what  
11:28:11 5 basis do you allege that that's a misrepresentation?

11:28:15 6 MR. SATURLEY: His question is -- I believe  
11:28:17 7 his question was -- made reference to all sources of  
11:28:22 8 liability insurance. The LGC has more than one  
11:28:26 9 policy applicable to this and, indeed, has had one  
11:28:31 10 policy paid.

11:28:39 11 THE PRESIDING OFFICER: Then I'll grant  
11:28:40 12 your objection.

11:28:42 13 Mr. Volinsky, ask a different  
11:28:43 14 question --

11:28:44 15 MR. VOLINSKY: Okay.

11:28:47 16 THE PRESIDING OFFICER: -- or be more  
11:28:49 17 specific, please.

11:28:49 18 Q. BY MR. VOLINSKY: At the time that this was  
11:28:50 19 written, you agree that the LGC had sued more than  
11:28:53 20 one of its carriers, correct?

11:28:56 21 A. Yes. But I also knew what Mr. Saturley  
11:29:03 22 just said: that there had been monies coming from at  
11:29:09 23 least one carrier. I knew that.

11:29:22 1 Q. You sit on the Hollis-Brookline Cooperative  
11:29:28 2 School Board?

11:29:29 3 A. Yes, sir.

11:29:30 4 Q. And you've described their functioning as  
11:29:33 5 being dysfunctional?

11:29:34 6 A. I did.

11:29:35 7 Q. Do your constituents in Hollis-Brookline  
11:29:41 8 know you feel that way?

11:29:43 9 A. I certainly --

11:29:44 10 THE PRESIDING OFFICER: Mr. Gordon?

11:29:45 11 MR. GORDON: How does he know what all the  
11:29:48 12 constituents of his community know?

11:29:52 13 THE PRESIDING OFFICER: Well, why don't we  
11:29:53 14 give him an opportunity to tell us if he does. Denied.

11:30:00 15 Please proceed, Mr. Volinsky.

11:30:02 16 Q. BY MR. VOLINSKY: Have you shared that  
11:30:04 17 opinion with your constituents in Hollis-Brookline?

11:30:07 18 A. Through a formal announcement? No. I've  
11:30:11 19 lived in that town since 1975. I would certainly say  
11:30:16 20 I'm well-known. I was just reelected by a substantial  
11:30:19 21 margin. When you're in public office for more than  
11:30:24 22 20 years, you have people that love you and people  
11:30:26 23 who don't like you at all. So when you talk about my

11:30:30 1 constituents, there's a wide range of opinion about  
11:30:34 2 Tom Enright. I like to think most of it, good.

11:30:42 3 Q. In the cooperative school district where  
11:30:47 4 you sit on the board, that school district holds trust  
11:30:52 5 funds that allow it to accumulate money year-to-year  
11:30:59 6 under RSA 198:20; does it not?

11:31:04 7 A. Yes. We've had an issue -- we've had a lot  
11:31:07 8 of conversation on that topic.

11:31:13 9 Q. And one of the things you do with that  
11:31:16 10 year-to-year holding of money is you support ball  
11:31:19 11 fields and the like?

11:31:19 12 A. Yes.

11:31:20 13 Q. You've used it for buildings from time to  
11:31:23 14 time?

11:31:23 15 A. Buildings?

11:31:26 16 Q. Carrying money year to year for the  
11:31:28 17 improvement of buildings?

11:31:32 18 A. You'd have to be more specific.

11:31:34 19 Q. We can -- I'll withdraw it.

11:31:36 20 You do use it for ball fields?

11:31:38 21 A. There are numerous funds and there are --  
11:31:47 22 there are at least a portion of funds -- of a fund is  
11:31:50 23 used for ball fields. That would be correct. But

11:31:53 1 the topic is much broader than ball fields and a fund.

11:31:57 2 Q. Understand. And that practice of using  
11:32:06 3 trust funds allows your cooperative school district  
11:32:09 4 to hold what are called non-lapsing funds, right?

11:32:13 5 A. Yes.

11:32:14 6 Q. That means that the account doesn't have to  
11:32:16 7 be zeroed out at the end of each --

11:32:19 8 A. True.

11:32:19 9 Q. -- year?

11:32:20 10 A. Yes, sir.

11:32:24 11 Q. And those funds are each approved by the  
11:32:26 12 local citizenry, correct?

11:32:29 13 A. That was -- that was what part of the  
11:32:33 14 conversation has been about. There's been a yearlong  
11:32:37 15 conversation on this topic.

11:32:39 16 Q. And you know that 198:20 -- the same  
11:32:43 17 statute -- also allows school districts to hold money  
11:32:48 18 year-to-year in non-lapsing funds to pay healthcare  
11:32:54 19 premiums, doesn't it?

11:32:56 20 A. I'm not familiar with that.

11:33:01 21 Q. Are you familiar with something in your  
11:33:15 22 school district called the BWG?

11:33:23 23 A. You haven't rung a bell yet.

11:33:28 1 Q. Last year did your school district adopt a  
11:33:34 2 benefits working group --

11:33:37 3 A. Oh.

11:33:38 4 Q. -- that's called in the minutes "BWG"?

11:33:41 5 A. That would have been helpful. Yes.

11:33:42 6 Q. And the purpose of the benefits working  
11:33:45 7 group is to help employees and retirees related to  
11:33:51 8 your school district to understand wellness programs  
11:34:00 9 in part?

11:34:02 10 A. In part.

11:34:02 11 Q. And to understand paths to lowering  
11:34:08 12 insurance -- health insurance costs in part?

11:34:11 13 A. That's the primary conversation.

11:34:12 14 Q. And that same benefits working group helps  
11:34:18 15 your employees become educated users of health  
11:34:24 16 insurance?

11:34:24 17 A. That's -- that's one of the notions that's  
11:34:28 18 been discussed.

11:34:28 19 Q. Those three functions -- wellness programs,  
11:34:36 20 identifying paths to lower costs, being better  
11:34:39 21 educated users -- those are all services that the LGC  
11:34:44 22 touts itself as providing to members, correct?

11:34:48 23 A. Absolutely.

11:34:48 1 Q. But in November of '11 -- I think is the  
11:34:53 2 date -- your cooperative formed its own group to do  
11:34:58 3 the same thing, right, in those three regards?

11:35:03 4 A. I wasn't aware that that group went off on  
11:35:10 5 its own. What I'd like you to understand about this  
11:35:14 6 is I have kept a significant distance from this  
11:35:18 7 group. I announced early on my position in LGC and  
11:35:27 8 my function in LGC and said that I did not want to  
11:35:32 9 have a conflict of interest on this area. So I'm  
11:35:38 10 probably not as knowledgeable about it as I might be  
11:35:41 11 because I have kept a significant distance from this  
11:35:44 12 group.

11:35:45 13 Q. Fair enough. But if the BWG activities are  
11:35:48 14 described in the board minutes for your --

11:35:52 15 A. I should.

11:35:52 16 Q. -- cooperative school district, you would  
11:35:54 17 know about it to that extent?

11:35:56 18 A. Yes, sir. Sorry for interrupting.

11:35:57 19 Q. That's okay. You do know you're here  
11:36:04 20 testifying on behalf of the LGC, not on behalf of  
11:36:06 21 your school district, correct?

11:36:07 22 A. I do.

11:36:08 23 Q. You do know your school district last month

11:36:13 1 interviewed SchoolCare as a potential successor to  
11:36:23 2 Local Government HealthTrust insurance?

11:36:23 3 A. I do.

11:36:23 4 Q. You do know that last month your school  
11:36:25 5 district interviewed Aetna as a potential replacement  
11:36:29 6 for Local Government Center HealthTrust insurance?

11:36:31 7 A. I do.

11:36:32 8 Q. And you do know that your school district  
11:36:37 9 interviewed Harvard Pilgrim as a potential successor  
11:36:40 10 to LGC HealthTrust, correct?

11:36:42 11 A. Correct.

11:36:42 12 Q. And the idea is to interview these  
11:36:46 13 alternative carriers -- in one case, alternative risk  
11:36:51 14 pool -- with an idea of changing for the 2014  
11:36:56 15 timeframe, right?

11:36:57 16 A. With an idea of gathering information to  
11:37:03 17 see if there's the possibility that our healthcare  
11:37:08 18 cost premiums can be lowered. That's what that group  
11:37:14 19 is attempting to do.

11:37:15 20 And what's been important to me is  
11:37:18 21 that more than a year ago, there was a representation  
11:37:23 22 by the party that's chairing that group that assuredly  
11:37:29 23 he would lower our costs -- our costs -- the district's

11:37:34 1 costs by at least 10 percent.

11:37:37 2           What he found out after all of this  
11:37:41 3 process that you are talking to me about is that he  
11:37:45 4 could not get quotes from SchoolCare at that  
11:37:49 5 particular time and Primex, I believe, because of our  
11:37:55 6 poor experience.

11:37:56 7           So it's been a learning process. And  
11:38:01 8 I have followed that learning process, but stayed  
11:38:03 9 well clear of it.

11:38:04 10           Q.    So just so I understand, are you saying you  
11:38:09 11 talked to the person who is involved, about SchoolCare  
11:38:13 12 or you read this in some minutes?

11:38:15 13           A.    No. I've participated in nothing. The  
11:38:19 14 first thing I did was announce a conflict of interest  
11:38:23 15 and tell people what my association -- They already  
11:38:28 16 knew I was involved with LGC. But I explained my  
11:38:32 17 involvement and said that I wanted no part in --

11:38:39 18           Q.    And so my --

11:38:40 19           THE PRESIDING OFFICER: Let him finish his  
11:38:42 20 answer.

11:38:42 21           MR. VOLINSKY: I'm sorry.

11:38:43 22           THE PRESIDING OFFICER: Go ahead and finish  
11:38:44 23 your answer.

11:38:45 1 THE WITNESS: That I wanted to play no  
11:38:47 2 farther -- because I was asked to join that group.  
11:38:49 3 And I said I didn't think -- well, I knew it wouldn't  
11:38:52 4 be appropriate.

11:38:53 5 Q. BY MR. VOLINSKY: So did you learn this  
11:38:54 6 information, which is what I was trying to ask you  
11:38:57 7 about, from talking to people on the group doing the  
11:38:59 8 interviewing or from minutes?

11:39:01 9 A. No. From hearing reports at School Board  
11:39:04 10 meetings. Reports from the individuals involved in  
11:39:08 11 this process.

11:39:09 12 Q. And when was your last School Board meeting?

11:39:11 13 A. We have monthly -- Where are we?

11:39:17 14 Q. You're early May.

11:39:20 15 A. April -- the third week in April, I believe,  
11:39:24 16 would have been our last one.

11:39:25 17 Q. And it's your testimony that you were told  
11:39:28 18 during the third week in April's board meeting that  
11:39:32 19 SchoolCare refused to quote?

11:39:34 20 A. No, no, no, no. That's not my testimony at  
11:39:37 21 all.

11:39:37 22 Q. Okay. That's what I'm trying to clarify.

11:39:39 23 A. Okay. No. I'm -- This BW -- whatever it

11:39:44 1 is -- group.

11:39:45 2 Q. G.

11:39:46 3 A. -- has been around for more than a year.

11:39:50 4 And so there's been a lot of conversation that I've

11:39:54 5 listened to. I can't -- I would be unable to identify

11:40:00 6 when I heard what.

11:40:03 7 Q. So let me back up. SchoolCare was at your

11:40:07 8 school district in April. That's when they were there;

11:40:13 9 isn't that right?

11:40:13 10 A. Sir, I don't know. I played no part in this.

11:40:17 11 Q. That's fine. I thought you'd already

11:40:19 12 answered that. And if I'm mistaken, that's fine.

11:40:23 13 You don't know when SchoolCare was there?

11:40:25 14 A. No, I don't. And I'm not sure that they

11:40:28 15 haven't been there twice. You may -- you apparently

11:40:31 16 know more about this than I do at this point. And so

11:40:36 17 they may be going through a second round. I've kept

11:40:39 18 my distance. I'm interested in their results. I'm

11:40:42 19 not interested in influencing that situation at all.

11:40:46 20 Q. And so if SchoolCare were there a few weeks

11:40:51 21 ago, you don't know if SchoolCare refused to quote or

11:40:55 22 is in the process of developing a quote?

11:40:57 23 A. I know nothing about what might have

11:40:59 1 happened a few weeks ago.

11:41:01 2 Q. Same question with Aetna. You don't know  
11:41:04 3 if they've refused to quote or are in the process of  
11:41:07 4 developing a quote?

11:41:08 5 A. I have heard of no quotes at my School  
11:41:13 6 Board level.

11:41:13 7 Q. Thank you. You talked about swine flu and  
11:41:20 8 Hong Kong flu. Does fear of a swine flu outbreak  
11:41:28 9 motivate your decision-making on levels of net assets  
11:41:34 10 to be maintained by the Local Government Center?

11:41:36 11 A. Not that specifically. What I was -- what  
11:41:40 12 I was trying to do was give you -- and maybe not  
11:41:46 13 successfully -- but a world perspective of what I see  
11:41:50 14 and what I hear. And generally what I hear is that  
11:41:55 15 people make mistakes by not having enough money.  
11:41:58 16 I don't want to make that mistake for the people that  
11:42:03 17 I -- the members that I represent. That's . . .

11:42:06 18 Q. You testified about Seabrook and the  
11:42:08 19 Japanese nuclear disaster. Does fear of a nuclear  
11:42:15 20 disaster at Seabrook motivate your decision-making on  
11:42:21 21 how much to hold in LGC net assets?

11:42:30 22 A. Just as I gave you my business experience  
11:42:33 23 earlier that affects my ability to make decisions,

11:42:37 1 yes, I take all of this into account in saying that  
11:42:39 2 there's danger in the world.

11:42:41 3           There's a possibility -- We had  
11:42:47 4 Katrina [sic] last year. Had that gone up, instead  
11:42:52 5 of the Connecticut River Valley, the Merrimack River  
11:42:59 6 Valley, New Hampshire would have been substantially  
11:43:02 7 involved in a significant hurricane. I take that  
11:43:06 8 into account. That's the good-faith ordinary prudence  
11:43:08 9 that I used in attempting to deliver my duty of care.

11:43:12 10       Q.    Thank you. Have you heard of reinsurance?

11:43:16 11       A.    Of course I have.

11:43:17 12       Q.    Does the Local Government Center HealthTrust  
11:43:23 13 currently use reinsurance?

11:43:25 14       A.    That's -- I would start with Wendy Parker  
11:43:30 15 on that.

11:43:30 16       Q.    Do you know, as you sit here?

11:43:33 17       A.    I -- I think I know, but I don't speculate.  
11:43:37 18 I -- the way I do my business is I start -- I ask  
11:43:43 19 LGC, all of the people -- all of the questions I need  
11:43:47 20 to ask. I go to my professionals. Then I enter the  
11:43:50 21 conversation. So the fact that I'm up here first  
11:43:54 22 today actually is out of sequence in terms of the way  
11:43:59 23 I deal with LGC. That has never happened before,

11:44:03 1 will never happen again. I always listen to my  
11:44:06 2 professionals first, and then I form my opinion.

11:44:10 3 Q. Whether you know that LGC HealthTrust uses  
11:44:15 4 reinsurance currently or not, do you understand its  
11:44:21 5 purpose is to protect a risk pool or a health insurer  
11:44:27 6 against an unanticipated set of catastrophic claims?

11:44:33 7 A. Yes. I understand that.

11:44:35 8 Q. Have you heard of aggregate stop loss?

11:44:41 9 A. I'm familiar with stop loss.

11:44:43 10 Q. The aggregate kind. Do you know what that  
11:44:46 11 means?

11:44:47 12 A. I'm not going to opine on -- again, I --  
11:45:00 13 I start by asking my people. They come to -- they  
11:45:03 14 deliver us all of the information we need to know.  
11:45:07 15 Then I go -- I go from there. I am not sitting here  
11:45:12 16 attempting to be in any way, shape, or form an expert  
11:45:16 17 on the goings-on of LGC. What I am doing is saying  
11:45:22 18 that the process that the Board of Directors goes  
11:45:26 19 through in delivering its duty of care is an  
11:45:33 20 excellent process. That is what I am convinced of.

11:45:38 21 Q. Do you, as a board member, participate in  
11:45:43 22 rate setting for HealthTrust?

11:45:45 23 A. Yes.

11:45:45 1 Q. Do you, as the board chair, lead the board's  
11:45:50 2 discussion about rate setting for HealthTrust?

11:45:53 3 A. As the board chair? Absolutely not.

11:45:56 4 Q. You participate?

11:45:58 5 A. Less -- less so as the board chair.

11:46:04 6 I have -- but yes, do I participate in discussions?

11:46:06 7 I do. But I don't lead off. I . . .

11:46:09 8 Q. That's fine. I didn't mean to cut you off.

11:46:13 9 Finish if you're . . .

11:46:14 10 A. Yes, sir. I'm finished.

11:46:15 11 Q. Do you know, as a board member who  
11:46:18 12 participates in rate setting discussions, whether or  
11:46:20 13 not members in HealthTrust are charged a part of  
11:46:25 14 their premium to buy reinsurance?

11:46:29 15 A. When we had reinsurance, the rates would  
11:46:39 16 include the cost of reinsurance, if that's responsive.

11:46:44 17 Q. So you say "when we had." Does that indicate  
11:46:48 18 knowledge about whether you currently have it or do  
11:46:50 19 not have it?

11:46:51 20 A. We have had considerable discussion about  
11:46:58 21 lessening our dependence on reinsurance and taking on  
11:47:06 22 more of the risk ourselves. And what gives us the  
11:47:10 23 capability to do that is our asset base, our reserves.

11:47:25 1 And the information that is given to me is that over  
11:47:28 2 the long haul, that saves our members money. Because  
11:47:34 3 reinsurance is expensive. And when you pay for it,  
11:47:39 4 if it's not used, you get nothing back for it.

11:47:47 5 So the conversation that I've been  
11:47:48 6 involved in is that it makes more sense to lower the  
11:47:54 7 cost of reinsurance, use our asset base in one way --  
11:48:03 8 not totally, but in one way to cover that reinsurance  
11:48:06 9 issue and still retain the value of that asset base.

11:48:12 10 Q. Let me suggest another term to you and ask  
11:48:18 11 you if you're familiar with it: intercompany claims  
11:48:21 12 pooling fee.

11:48:24 13 A. No.

11:48:26 14 MR. SATURLEY: If we're done with the topic  
11:48:28 15 of reinsurance, may I --

11:48:30 16 MR. VOLINSKY: No, this relates exactly to  
11:48:33 17 the topic of reinsurance. Thank you.

11:48:35 18 THE PRESIDING OFFICER: Please sit down,  
11:48:36 19 Mr. Saturley.

11:48:37 20 THE WITNESS: I'm not familiar with that  
11:48:38 21 term.

11:48:39 22 Q. BY MR. VOLINSKY: Do you know that  
11:48:40 23 reinsurance can be done externally by buying a policy

11:48:43 1 in essence and can also be done internally by sharing  
11:48:47 2 money to pay on high claims levels? Are you aware of  
11:48:53 3 that concept?

11:48:56 4 A. I would say no.

11:49:02 5 Q. Do you know if part of the rates charged  
11:49:06 6 HealthTrust members include a factor for intercompany  
11:49:11 7 pooling fees?

11:49:14 8 A. I do not know that.

11:49:16 9 Q. Do you know if there's a risk factor that's  
11:49:19 10 part of the rate-setting process for HealthTrust?

11:49:25 11 A. Yes. I believe the answer is yes.

11:49:31 12 Q. And do you agree with me that at times,  
11:49:36 13 your board has specifically approved hiking the risk  
11:49:41 14 factor so that you could intentionally add to net  
11:49:47 15 assets for LGC?

11:49:50 16 A. That's a characterization that I wouldn't  
11:49:56 17 agree with.

11:49:57 18 Q. Let's break it down. Do you understand that  
11:50:01 19 normally the risk factor is 2 or 3 percent of premiums?

11:50:05 20 A. Yes.

11:50:05 21 Q. And do you understand that at times, the  
11:50:08 22 Local Government Center board has approved using  
11:50:11 23 5 percent so that the extra 2 percent increment could

11:50:21 1 be used to build member balance or net assets?

11:50:26 2 A. That's -- I don't believe that's current  
11:50:32 3 history. I think you're talking to -- if that  
11:50:34 4 happened, I don't recall it. I'm not saying it  
11:50:36 5 didn't happen. But I would say a number of years  
11:50:44 6 ago, if it happened. I don't recall the details of  
11:50:52 7 everything that goes on at LGC.

11:50:56 8 Q. Fair enough. When you go to these national  
11:51:00 9 conventions and you talk to other trustees or other  
11:51:03 10 board members, how many of them are subject to the  
11:51:09 11 RSA 5-B requirement to return earnings and surplus  
11:51:15 12 excess of operations? Do you know?

11:51:18 13 A. No. I certainly would not know that.

11:51:23 14 MR. VOLINSKY: If I can have just a moment.

11:51:25 15 THE PRESIDING OFFICER: Surely.

11:51:33 16 Q. BY MR. VOLINSKY: I understand -- I think  
11:51:35 17 you said you have 28 board members; is that right?

11:51:39 18 A. I believe that's the -- We're authorized  
11:51:42 19 for 31, and I believe the current count is 28. I may  
11:51:46 20 be off by one. But it's very close to that number.

11:51:49 21 Q. 28 plus or minus one. It's been at that  
11:51:53 22 level for a couple of years now, hasn't it?

11:51:55 23 A. The -- I can't give you the history of --

11:52:00 1 We go up and down -- Our board members come and go  
11:52:05 2 with some -- some frequency. So do I know the  
11:52:09 3 history? I really can't give you the history of what  
11:52:13 4 our level of board activity -- board membership has  
11:52:17 5 been. I think it's been pretty consistently in the  
11:52:20 6 high 20s is the best I can offer.

11:52:23 7 Q. When did you become board chair?

11:52:25 8 A. November of last year.

11:52:27 9 Q. So last year did you have 28 plus or minus  
11:52:32 10 one?

11:52:32 11 A. I would answer that as yes.

11:52:36 12 Q. Okay. Is there an effort to identify and  
11:52:41 13 recruit for the missing two or three slots?

11:52:46 14 A. Maura Carroll handles that issue. And so I  
11:52:55 15 don't know what her efforts are in that respect right  
11:52:57 16 now.

11:52:57 17 Q. Ms. Carroll is the current executive  
11:53:02 18 director?

11:53:02 19 A. Yes.

11:53:02 20 Q. And when you say she "handles that issue,"  
11:53:05 21 it's Ms. Carroll as the executive director who  
11:53:08 22 identifies potential board members and recommends  
11:53:11 23 them up to the board; is that what you're saying?

11:53:14 1 A. No. There's a -- I think that's a function  
11:53:20 2 of the Personnel Committee. There's a committee that  
11:53:28 3 she works with that -- it's the Nomination Committee.  
11:53:34 4 So there's a group of board members that she works  
11:53:41 5 with, and that committee brings forward new board  
11:53:44 6 members. I've never served on that committee --

11:53:46 7 Q. Okay.

11:53:46 8 A. -- so I can't give you a lot on that one.

11:53:48 9 Q. Let me see if you can give me this much.  
11:53:52 10 I said that Ms. Carroll identified and suggested names  
11:53:57 11 to the board. She actually identifies and suggests  
11:54:01 12 names to this Nomination Committee; is that right?

11:54:03 13 A. I wouldn't go so far as to -- They have  
11:54:07 14 conversations; they have meetings. I have never been  
11:54:10 15 in attendance --

11:54:11 16 Q. Okay.

11:54:12 17 A. -- so Maura Carroll can better answer that  
11:54:15 18 process piece.

11:54:22 19 MR. VOLINSKY: Okay. Fair enough.

11:54:24 20 If I can have just one second, I think  
11:54:27 21 I'm almost done.

11:54:47 22 I have nothing further.

11:54:50 23 THE PRESIDING OFFICER: Thank you,

11:54:50 1 Mr. Volinsky.

11:54:51 2 Mr. Saturley, redirect?

11:54:56 3 MR. SATURLEY: Just a point of clarification,  
11:54:58 4 Mr. Mitchell.

11:55:00 5 REDIRECT EXAMINATION

11:55:01 6 BY MR. SATURLEY:

11:55:02 7 Q. You joined the board when? Say it one more  
11:55:03 8 time? 2004, is that right?

11:55:03 9 A. 2004, July is when -- my first recollection.

11:55:04 10 Q. There will be some testimony later today  
11:55:05 11 that the RBC methodology was first adopted by the  
11:55:07 12 board in 2002. Will you accept that representation?  
11:55:13 13 Were you around in 2002 to know who first suggested it?

11:55:16 14 A. I was not. And that is what I believe the  
11:55:20 15 discussion was last week.

11:55:23 16 MR. SATURLEY: No further questions.

11:55:24 17 THE PRESIDING OFFICER: Thank you,

11:55:24 18 Mr. Saturley.

11:55:25 19 Mr. Gordon?

11:55:26 20 MR. GORDON: None.

11:55:27 21 THE PRESIDING OFFICER: Thank you.

11:55:27 22 Mr. Howard?

11:55:29 23 MR. HOWARD: No thank you, Mr. Mitchell.

11:55:31 1 THE PRESIDING OFFICER: Okay.

11:55:33 2 Mr. Saturley -- I'm sorry -- Mr. Volinsky?

11:55:35 3 MR. VOLINSKY: Done.

11:55:35 4 THE PRESIDING OFFICER: Thank you. All  
11:55:36 5 right. Mr. Saturley, you're done with this witness?

11:55:40 6 MR. SATURLEY: I am, sir.

11:55:41 7 THE PRESIDING OFFICER: Do you want to tell  
11:55:42 8 me if you'd like to begin with another witness or do  
11:55:46 9 we take the lunch break?

11:55:47 10 MR. SATURLEY: I -- In light of the time,  
11:55:50 11 my suggestion would be to take the lunch break.

11:55:52 12 THE PRESIDING OFFICER: Okay. Then we'll  
11:55:53 13 be breaking for lunch and we'll return at 1:15.  
11:55:57 14 Thank you.

11:55:58 15 MR. SATURLEY: Thank you.

11:56:05 16 THE PRESIDING OFFICER: Thank you,  
11:56:06 17 Mr. Enright.

11:56:08 18 THE WITNESS: Thank you.

11:56:08 19 (Witness excused.)

11:56:11 20 (Whereupon, at 11:55 a.m.,

11:56:16 21 the proceedings were recessed,  
11:56:19 22 to reconvene at 1:15 p.m.

11:56:21 23 this same date.)

## AFTERNOON SESSION

(1:14 p.m.)

11:56:21 1  
01:15:16 2  
01:15:16 3 THE PRESIDING OFFICER: We've returned this  
01:15:20 4 afternoon from our lunch recess. We are in the  
01:15:29 5 direct cases or cases-in-chief of the LGC and its  
01:15:34 6 entities, Ms. Carroll and Mr. Curro, as they are  
01:15:44 7 being presented in integrated mode at this time.

01:15:44 8 Is that correct, Mr. Saturley?

01:15:44 9 MR. SATURLEY: That is, sir.

01:15:49 10 THE PRESIDING: Mr. Gordon, is that correct?

01:15:49 11 MR. GORDON: Yes.

01:15:50 12 THE PRESIDING OFFICER: And Mr. Howard?

01:15:51 13 MR. HOWARD: Yes, Mr. Mitchell.

01:15:53 14 THE PRESIDING OFFICER: Thank you. And  
01:15:54 15 Mr. Saturley is about to call a witness.

01:15:56 16 You have called who, sir?

01:16:00 17 MR. SATURLEY: This is Peter Riemer,  
01:16:03 18 R-i-e-m-e-r.

01:16:04 19 THE PRESIDING OFFICER: Thank you very much.

01:16:07 20 Mr. Riemer, would you raise your  
01:16:11 21 right hand, please.

01:16:12 22 (The witness was duly sworn by  
01:16:14 23 the Presiding Officer.)

01:16:20 1 THE PRESIDING OFFICER: Mr. Riemer, can we  
01:16:22 2 have your name and provide a business address for us.

01:16:23 3 THE WITNESS: My business address is  
01:16:25 4 479 Heights Road in Ridgewood, New Jersey.

01:16:33 5 THE COURT REPORTER: And your name? Sorry.  
01:16:33 6 He didn't say his name.

01:16:34 7 THE PRESIDING OFFICER: Oh, I'm sorry.

01:16:34 8 THE WITNESS: Peter Riemer.

01:16:37 9 THE PRESIDING OFFICER: Thank you. We're  
01:16:38 10 ready now, Mr. Saturley.

01:16:40 11 MR. SATURLEY: Thank you, Mr. Mitchell.

12 PETER RIEMER

13 having been first duly sworn by the Presiding  
14 Officer, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SATURLEY:

01:16:41 17 Q. Good afternoon, Mr. Riemer.

01:16:43 18 A. Good afternoon.

01:16:43 19 Q. What relation do you have to the Local  
01:16:46 20 Government Center?

01:16:46 21 A. I serve as their consulting actuary.

01:16:48 22 Q. And are you the actuary that is used by  
01:16:51 23 HealthTrust in accordance with its obligations under

01:16:55 1 RSA 5-B?

01:16:56 2 A. I am.

01:16:56 3 Q. Have you worked with HealthTrust for a  
01:16:58 4 number of years?

01:16:59 5 A. Yes, I've worked with HealthTrust since 1988.

01:17:01 6 Q. And have you developed opinions with regards  
01:17:03 7 to the matters that bring us together according to  
01:17:06 8 the Bureau's amended petition and certain reports  
01:17:09 9 generated by their experts?

01:17:11 10 A. I have.

01:17:11 11 Q. Could you summarize for us, please, those  
01:17:15 12 opinions.

01:17:16 13 A. Sure. Just briefly, my opinion is that the  
01:17:18 14 capital -- target capital levels held by LGC are  
01:17:23 15 reasonable, prudent, and necessary for the successful  
01:17:25 16 operation of the program. It's also my opinion that  
01:17:30 17 the suggested maximum capital or recommended maximum  
01:17:30 18 capital proposed by the Bureau is inadequate and  
01:17:33 19 would work against the interests of LGC trying to  
01:17:35 20 serve its members.

01:17:36 21 Q. Thank you very much. Could we talk a little  
01:17:40 22 bit more about your qualifications to render the  
01:17:46 23 opinions that you are rendering. Would you talk for

01:17:48 1 a little bit about your professional employment  
01:17:50 2 history.

01:17:51 3 A. Yes. I began work as an actuarial trainee  
01:17:54 4 at the John Hancock Mutual Life Insurance Company in  
01:17:57 5 Boston in 1974. In 1979 I became a fellow of the  
01:18:01 6 Society of Actuaries and performed at various levels  
01:18:05 7 in various divisions within John Hancock until 1987,  
01:18:09 8 at which point I moved for career reasons to the  
01:18:13 9 consulting environment joining Watson Wyatt  
01:18:18 10 Worldwide, now Towers Watson, in 1987. While there I  
01:18:21 11 worked as a group insurance actuary consulting to a  
01:18:23 12 number of corporate plans, Taft-Hartley, that is  
01:18:27 13 labor union plans.

01:18:29 14 From 1996 to 2003, I served as the  
01:18:33 15 retiree medical actuary for General Motors Corporation  
01:18:38 16 and also in that same period, I was chair of Watson  
01:18:41 17 Wyatt's retiree medical work group.

01:18:41 18 Q. And is that work that you just described,  
01:18:42 19 is that within the health field?

01:18:43 20 A. It is.

01:18:44 21 Q. What are you doing at this time? What's  
01:18:48 22 your -- who's your current employer?

01:18:49 23 A. I'm self-employed. I left Watson Wyatt in

01:18:53 1 2003 to form my own firm, which I had been interested  
01:18:55 2 in doing for a number of years. And I serve about  
01:18:58 3 half a dozen clients ranging from HealthTrust -- LGC  
01:19:03 4 HealthTrust to a number of Taft-Hartley funds. I also  
01:19:06 5 work in this capacity for the American Mathematical  
01:19:09 6 Society.

01:19:09 7 Q. You mentioned Taft-Hartley funds. Could you  
01:19:12 8 explain in a little bit more detail what that means.

01:19:15 9 A. Yes. It's very common in some unionized  
01:19:18 10 workforces for the union workers to be covered by a  
01:19:21 11 health fund which is funded with hourly contribution  
01:19:24 12 rates paid by employers. And in those environments --  
01:19:28 13 those health funds are called Taft-Hartley funds,  
01:19:31 14 stemming from the enabling legislation back in the  
01:19:32 15 earlier part of the Twentieth Century.

01:19:35 16 The way such a fund works is that  
01:19:37 17 through a collective bargaining agreement, labor and  
01:19:40 18 management mutually agree that a certain portion of  
01:19:43 19 the hourly package, X dollars and cents per hour will  
01:19:46 20 be paid into the fund, and the fund is managed by  
01:19:50 21 trustees, half labor, half management. And the  
01:19:53 22 arrangement is to use that income to fund a program  
01:19:57 23 of health benefits. And I assist -- for those that I

01:20:01 1 work with, I assist them in financial management of  
01:20:04 2 such programs.

01:20:04 3 Q. Your educational background, briefly.

01:20:07 4 A. I graduated from Tufts University with a  
01:20:11 5 B.S. in mathematics in 1969. I received an M.S. in  
01:20:15 6 mathematics from Northeastern University in 1970.

01:20:19 7 Q. And professional designations, if you would.

01:20:21 8 A. Well, as I said, I'm a fellow of the  
01:20:23 9 Society of Actuaries. I'm also a fellow of the  
01:20:26 10 Conference of Consulting Actuaries. And I'm a member  
01:20:29 11 of the American Academy of Actuaries.

01:20:31 12 Q. And do those designations allow you to act  
01:20:33 13 as the actuary for HealthTrust in accordance with the  
01:20:36 14 requirements of RSA 5-B?

01:20:39 15 A. They do.

01:20:39 16 Q. You've heard that this hearing has been  
01:20:44 17 going on for a week now. And you've been here today?

01:20:46 18 A. Yes.

01:20:47 19 Q. Have you watched any of the testimony  
01:20:49 20 through any other method than being here present?

01:20:52 21 A. I have. I watched through a streaming  
01:20:54 22 Internet feed last week. So a good deal of last  
01:20:58 23 week's proceedings.

01:20:58 1 Q. And so did you watch the Bureau's experts  
01:21:02 2 with regards to the issues of reserve and capital  
01:21:05 3 adequacy?

01:21:05 4 A. I did.

01:21:06 5 Q. Would you please tell us about the Local  
01:21:10 6 Government Center's current level of capital adequacy,  
01:21:14 7 its purpose, and how they reached that particular  
01:21:15 8 level.

01:21:16 9 A. Okay. LGC uses a so-called risk-based  
01:21:21 10 capital concept as a tool in thinking about and  
01:21:23 11 deciding on an appropriate level of capital for the  
01:21:26 12 operation. And they arrived at that by studying the  
01:21:31 13 issue and looking at comparison groups of insurers  
01:21:34 14 and thinking about the particular characteristics of  
01:21:36 15 their operation and setting a level that they felt  
01:21:43 16 appropriate for the features of their program.

01:21:46 17 Q. Could you tell us a little bit more about  
01:21:47 18 the concept and the genesis by which LGC arrived at  
01:21:52 19 choosing that methodology.

01:21:54 20 A. Sure. Well, risk-based capital is a  
01:21:56 21 concept that is -- exists in the regulatory scheme  
01:22:00 22 for U.S. insurers. And it was first put forth by the  
01:22:03 23 National Association of Insurance Commissioners

01:22:05 1 working with the American Academy of Actuaries back  
01:22:08 2 in 1994. That was the start of the process of  
01:22:12 3 developing the concept. I don't believe it actually  
01:22:14 4 took effect for health insurers until around 1998.

01:22:18 5 And throughout the period that I've  
01:22:22 6 worked with HealthTrust, the board has been keenly  
01:22:25 7 interested in the question of how much surplus, how  
01:22:29 8 much capital should this organization hold. What  
01:22:31 9 risks do we face. What's the right amount of capital  
01:22:34 10 for us to have.

01:22:36 11 And in response to particular  
01:22:37 12 inquiries along that line in 2002, I provided an  
01:22:41 13 education to the board on a risk-based capital  
01:22:44 14 concept. And I know you've heard from other persons  
01:22:47 15 testifying that described the concept. But it's  
01:22:49 16 basically a way to express the capital -- the amount  
01:22:54 17 of capital that an insurer holds in terms of risk  
01:22:59 18 premium, so rather than taking a percent of premium  
01:22:59 19 or a dollar amount, which makes it difficult to  
01:23:02 20 compare different programs, the RBC program is one  
01:23:06 21 that develops a ratio that allows one to assess  
01:23:09 22 capital in that way.

01:23:10 23 Q. And what is it measuring when it assesses

01:23:14 1 the capital?

01:23:14 2 A. Well, it's measuring risk. It starts off  
01:23:19 3 with a fundamental calculation that involves -- it is  
01:23:22 4 developed out of a stochastic process between the  
01:23:25 5 NAIC and the American Academy of Actuaries that  
01:23:28 6 basically tries to distill the risk characteristics  
01:23:32 7 of an insurance operation into a single figure called  
01:23:36 8 the authorized control level.

01:23:39 9 And the way they do that is through a  
01:23:41 10 complex model that details a lot of the financial  
01:23:44 11 elements within the insurance operation: asset amounts,  
01:23:47 12 type of assets, risk, premiums, managed care  
01:23:51 13 arrangements, various other facets of the insurance  
01:23:56 14 operation. And it digests and distills all that data  
01:23:59 15 about the insurance operation into this single number  
01:24:01 16 called the authorized control level.

01:24:03 17 And what was promulgated by the NAIC  
01:24:06 18 was a rule that said, No insurer shall hold capital  
01:24:11 19 that is less than two times the authorized control  
01:24:14 20 level, the ACL, and that's the basis of the 2.0 that  
01:24:18 21 we've heard discussed a lot so far in this process.

01:24:21 22 Q. And you brought all this to the board's  
01:24:25 23 attention?

01:24:26 1 A. I did.

01:24:26 2 Q. In 2002?

01:24:28 3 A. (Nodding head.)

01:24:29 4 Q. Had you been working with the board for  
01:24:31 5 years prior to that?

01:24:32 6 A. I had.

01:24:32 7 Q. Was the -- and I take it they adopted that  
01:24:36 8 in 2002?

01:24:37 9 A. They adopted the concept. The ability to  
01:24:41 10 implement it and make it real had to await the  
01:24:46 11 purchase of the software to do it and -- but  
01:24:49 12 essentially the decision to move down that path was a  
01:24:53 13 2002 decision.

01:24:53 14 Q. Was that 2002 decision to move to the RBC,  
01:24:56 15 was that a decision to -- was that a significant  
01:25:01 16 decision with regards to the board's approach to  
01:25:05 17 capital? In other words, was it a different way that  
01:25:09 18 they were moving with capital, or were they merely  
01:25:11 19 changing a metric?

01:25:12 20 A. I would describe it as something that  
01:25:15 21 allowed more rigor to be imposed on what they had  
01:25:19 22 always done, which is to consider what an appropriate  
01:25:22 23 level of capital for the organization should be.

01:25:25 1                   And in fact, when they decided in  
01:25:28 2 2002 to adopt the risk-based capital method, they did  
01:25:33 3 so initially divisionally by agreeing to establish a  
01:25:41 4 target level for capital that was commensurate with  
01:25:46 5 their long-standing target level that they had used  
01:25:49 6 prior to any RBC concept.

01:25:52 7           Q.     And could you talk a little bit about what  
01:25:53 8 that long-standing view had been.

01:25:55 9           A.     Yes.   The long-standing standard for target  
01:25:59 10 capital for HealthTrust was 20 percent of claims.  
01:26:02 11 And that stemmed from the early years of the operation  
01:26:06 12 when, for protection, they purchased aggregate stop  
01:26:13 13 loss insurance, which as the name implies, applies  
01:26:16 14 when aggregate claims get big.

01:26:18 15                   In particular, for a number of years,  
01:26:20 16 they purchased a so-called 20 percent aggregate stop  
01:26:24 17 loss, which was the kind of protection that reimbursed  
01:26:28 18 HealthTrust should its claims exceed 20 percent of  
01:26:31 19 expected claims.

01:26:32 20                   And their policy in line with  
01:26:35 21 maintaining that stop loss coverage, that aggregate  
01:26:38 22 stop loss coverage, was to fill in the 20 percent  
01:26:40 23 corridor between expected claims and the obligation

01:26:42 1 of the reinsurer, to fill that in with capital.

01:26:46 2 In other words, 20 percent of claims. So that was  
01:26:48 3 their long-standing target method.

01:26:52 4 Q. So what you're talking about is a historical  
01:26:55 5 perspective on a 20 percent of claim gap or corridor  
01:26:58 6 that they were -- had always been their target to fill?

01:27:01 7 A. Yes.

01:27:02 8 Q. And could you relate that then to the new  
01:27:06 9 process and the new thinking with regards to RBC.

01:27:09 10 A. Sure. Let me start by saying that at the  
01:27:12 11 inception of the RBC process, I made it clear to the  
01:27:16 12 board in, first of all, talking specifically about  
01:27:19 13 that critical 2.0 measure, that that was in no way  
01:27:23 14 regarded in any quarter as adequate capital. That in  
01:27:27 15 fact, its whole genesis was as a regulatory alert to  
01:27:33 16 insurance departments. And so it had to be  
01:27:34 17 considered as just that. It's a level below which  
01:27:37 18 you don't want to be. It's a level at which you  
01:27:40 19 don't want to be because it invites regulatory  
01:27:42 20 attention and possibly intervention. It's not a good  
01:27:44 21 level of surplus to be at.

01:27:46 22 So what I did in presenting the  
01:27:48 23 concept to the board was, first of all, to point that

01:27:51 1 out. And then look to some sort of comparison group  
01:27:55 2 to say, Well, if 2.0 is not an adequate level, what is.  
01:27:59 3 And found, as we've heard here and is still the case  
01:28:03 4 today, that there is no consensus on what an adequate  
01:28:05 5 level of capital is, what an appropriate level of  
01:28:10 6 target capital is. So to aid the discussion for the  
01:28:12 7 board, I presented survey information showing what  
01:28:15 8 other New England insurers were holding as capital  
01:28:20 9 expressed in the RBC ratio language.

01:28:22 10 Q. Just to make sure I -- just to clarify a  
01:28:27 11 point, the RBC regulatory level that you've talked  
01:28:32 12 about a couple of times is the 2.0.

01:28:34 13 A. Um-hum.

01:28:34 14 Q. And then we've talked about this 20 percent  
01:28:37 15 gap and their historical target. Are they the same  
01:28:41 16 number?

01:28:41 17 A. The 2.0 and the 20 percent gap are not.  
01:28:45 18 The 2.0 is probably something on the order of half of  
01:28:49 19 the 20 percent target; and another way I can relate  
01:28:51 20 it is to say that, again provisionally, in 2002 when  
01:28:54 21 the concept was introduced and I advised the board,  
01:28:57 22 as I said, that the 2.0 level was not considered  
01:29:01 23 adequate and presented comparison data on levels that

01:29:04 1 other insurers were holding, which were generally  
01:29:09 2 higher -- much higher than 2.0 and certainly higher  
01:29:12 3 than the 4.20 that was provisionally adopted.

01:29:16 4 I made the observation to the board  
01:29:18 5 that their traditional 20 percent of claims target  
01:29:22 6 correlated dollar-wise to a 4.20. And I think in the  
01:29:26 7 initial retreat when I presented this, it was maybe  
01:29:30 8 4.25. But that size number was the RBC equivalent of  
01:29:35 9 their long-term 20 percent target.

01:29:37 10 Q. So the target that they had always been  
01:29:40 11 shooting for happened to equate to a 4.2 RBC?

01:29:44 12 A. It did.

01:29:44 13 Q. And they were made aware of that in the  
01:29:46 14 initial retreat in 2002 when the topic of RBC and the  
01:29:52 15 topic of changing the metric came up?

01:29:53 16 A. They were.

01:29:54 17 Q. I'd like to just pause for a moment and  
01:30:00 18 have you talk a little bit about why capital -- why  
01:30:06 19 capital. You know, what are the factors that capital  
01:30:10 20 exists to protect against and that the board was  
01:30:12 21 introduced to the various factors.

01:30:16 22 A. Well, the primary need for capital in a  
01:30:19 23 health insurer is claims risk, the risk of adverse

01:30:23 1 experience. Whether it be within what might -- one  
01:30:26 2 might call reasonable parameters: volatility, either  
01:30:30 3 due to the inherent morbidity within the group or  
01:30:33 4 external factors such as government cost shifting and  
01:30:37 5 other factors, hospital contracting.

01:30:39 6 Q. And I'm going to slow you down just a little  
01:30:41 7 bit.

01:30:42 8 A. Right.

01:30:42 9 Q. Can you expand on those just a little bit,  
01:30:44 10 in part for Ms. Smith's benefit, but in part for all  
01:30:48 11 the rest of us who are trying to follow because we're  
01:30:50 12 not actuaries and we don't work in your field. So  
01:30:53 13 could you break those down just a little bit more.

01:30:55 14 A. Sure. Let's talk about claims risk. That's  
01:30:58 15 the biggest risk for which health insurers need capital  
01:31:03 16 protection. And the claims risk is that claims will  
01:31:06 17 turn out to be higher than what was rated for.

01:31:10 18 In any setting of rates, there's an  
01:31:12 19 assumption about what claims will be and in the  
01:31:16 20 actual unfolding reality, claims are often different.  
01:31:19 21 And we've had a number of years where they've been a  
01:31:22 22 lot different in an adverse way, a lot higher than  
01:31:25 23 projected.

01:31:26 1 Q. Let's pause there. Isn't this what an  
01:31:30 2 actuary does, is really part of your focus, right?

01:31:32 3 A. Yes.

01:31:32 4 Q. Is to anticipate the claims that are coming?

01:31:36 5 A. It's to anticipate based on the best  
01:31:39 6 knowledge possible. And we found through experience  
01:31:42 7 that that anticipation is almost always wrong. It's  
01:31:47 8 right on average, but it's pretty much wrong in every  
01:31:50 9 single instance. And the inference is when it's  
01:31:53 10 wrong in an adverse direction is what capital is  
01:31:56 11 needed for.

01:31:57 12 Q. And so again, you would say that in any one  
01:32:00 13 particular year, is your prediction going to be dead  
01:32:03 14 on?

01:32:04 15 A. No.

01:32:04 16 Q. It could be higher; it could be lower?

01:32:06 17 A. Yes.

01:32:07 18 Q. But over time, you tend to see that your  
01:32:11 19 anticipated and predictions tend to average out and  
01:32:14 20 be correct?

01:32:15 21 A. Yes.

01:32:15 22 Q. And it's for the times when you are wrong,  
01:32:19 23 that's one of the reasons for capital?

01:32:20 1 A. Yes.

01:32:20 2 Q. What's another reason why the board should,  
01:32:24 3 and indeed does, set aside capital?

01:32:26 4 A. Well, there's another kind of claims risk.  
01:32:28 5 The kind of claims risk I just described might be  
01:32:31 6 considered ordinary, normal claims risk. It's the  
01:32:34 7 inherent volatility in a system as unpredictable as  
01:32:39 8 healthcare.

01:32:39 9 There's another kind of risk --

01:32:42 10 Q. Break that down for us. What does that mean?  
01:32:45 11 The amounts could be wrong but what are you then going  
01:32:47 12 on and saying now, that there's an inherent volatility?  
01:32:50 13 What does that mean?

01:32:50 14 A. Just a -- a natural phenomenon that in a  
01:32:57 15 population of people with -- we talk about the 70,000  
01:33:01 16 lives that are covered by HealthTrust -- the costs  
01:33:04 17 that HealthTrust experiences in a year are subject to  
01:33:08 18 many things that can behave in a volatile manner.  
01:33:12 19 The morbidity levels in the population. The pricing  
01:33:15 20 decisions of providers. The care provisions of  
01:33:19 21 providers. The shifting of costs that may occur to a  
01:33:23 22 group like HealthTrust from government decisions such  
01:33:27 23 as a decision to impose limitations on, say, Medicaid

01:33:32 1 or Medicare reimbursements that have the result of  
01:33:34 2 having providers having to shift those costs elsewhere.

01:33:38 3 So there are many variables, looking  
01:33:40 4 forward, that turn out to be variable and not  
01:33:45 5 predictable. And that's the kind of phenomenon that  
01:33:48 6 I'm talking about. The outcome of all those variables  
01:33:51 7 ends up being what is often seen as an adverse result  
01:33:55 8 relative to a projection.

01:33:57 9 Q. Any other factors that you would have  
01:34:00 10 brought to the board's attention as a good and  
01:34:03 11 sufficient reason to be setting aside capital?

01:34:04 12 A. There's another health claims risk factor  
01:34:07 13 outside of the kind of volatility that I just  
01:34:10 14 described. And that would be the much less common,  
01:34:14 15 but potentially more severe effects of things like  
01:34:18 16 pandemics or a terrorist attack. So that's another  
01:34:23 17 component of thinking about what a proper capital  
01:34:27 18 level should be.

01:34:28 19 And then besides claims risk, there's  
01:34:30 20 other kinds of business risk. There's risk with  
01:34:32 21 respect to the performance, and not only with regard  
01:34:36 22 to investment results, but preservation of capital in  
01:34:41 23 the investments held. There's business risk

01:34:42 1 associated with whether customers/member groups pay  
01:34:50 2 their premiums.

01:34:50 3 Q. Sounds to me like you're moving into a new  
01:34:53 4 category.

01:34:53 5 A. Yes.

01:34:53 6 Q. You've talked a little bit about the  
01:34:55 7 inherent risk just in the health pricing and the  
01:34:57 8 volatility --

01:34:58 9 A. Yes.

01:34:59 10 Q. -- for the risks they are insuring. Then I  
01:35:01 11 take it that I hear you saying there's another kind  
01:35:03 12 of risk, which you called, I think, business risk?

01:35:07 13 A. Yes.

01:35:07 14 Q. And then I -- you said something about  
01:35:09 15 investments. And so could we repeat that?

01:35:12 16 A. Sure. What I'm getting at in listing these  
01:35:17 17 exposures to risk is -- basically stems back to the  
01:35:22 18 concept that within the enterprise, financial gains  
01:35:27 19 and losses occur from many different sources. It's  
01:35:29 20 not just the exposure that claims can be higher than  
01:35:32 21 projected. Anything that removes actual income from  
01:35:39 22 the operation or increases expense to the operation  
01:35:41 23 relative to what was assumed in the rating, any

01:35:44 1 variance like that can increase loss and, therefore,  
01:35:47 2 represents a risk that needs to be capitalized.

01:35:49 3 Q. So when they're pricing going forward, is one  
01:35:53 4 of the factors that LGC or HealthTrust would consider  
01:35:56 5 is the anticipated return on their investments?

01:35:59 6 A. Yes.

01:35:59 7 Q. And they build that into their model for  
01:36:04 8 pricing?

01:36:04 9 A. Yes.

01:36:04 10 Q. And if the actual return on investment was  
01:36:08 11 less than anticipated, that has an effect on their  
01:36:11 12 results?

01:36:12 13 A. Yes.

01:36:13 14 Q. Is that one of the variables that goes into  
01:36:17 15 the equation when assessing capital adequacy?

01:36:21 16 A. It is.

01:36:21 17 Q. And what about the possibility that an  
01:36:24 18 investment could be lost altogether? Is that also  
01:36:29 19 something that is built into an assessment of capital  
01:36:32 20 adequacy?

01:36:32 21 A. It is.

01:36:33 22 Q. What about the growth or diminishment in  
01:36:36 23 membership size? Is that something that is considered

01:36:41 1 in determining an appropriate level of capital  
01:36:44 2 adequacy?

01:36:44 3 A. It doesn't directly enter into the RBC  
01:36:46 4 formula. The RBC calculation is based on the premise  
01:36:49 5 that the organization size will be the same next year  
01:36:52 6 as it is this year. But then in the unfolding reality,  
01:36:57 7 growth or shrinkage in the size of the operation can  
01:37:01 8 affect capital levels and surplus levels.

01:37:04 9 So, for example, if membership were  
01:37:06 10 to grow by 10 percent next year, that would pretty  
01:37:09 11 much require 10 percent more capital.

01:37:12 12 Q. Could you explain that.

01:37:13 13 A. Sure. The -- the capital requirements, as  
01:37:18 14 I said, relate to risk, and the primary overwhelming  
01:37:23 15 risk in HealthTrust and any health insurer is the  
01:37:26 16 claims risk or the underwriting risk, and that is  
01:37:28 17 proportional to the size of the population that's  
01:37:30 18 being insured, the size of the population and the  
01:37:33 19 corresponding claims that they will generate.

01:37:35 20 And so if the population increases  
01:37:37 21 10 percent, the projected claims, expected claims,  
01:37:41 22 would increase 10 percent, the whole balloon expands  
01:37:44 23 and therefore, the required capital, or if you prefer

01:37:49 1 to say, the risk associated with that enterprise is  
01:37:51 2 now 10 percent bigger and so there would need to be  
01:37:55 3 correspondingly larger capital requirements to  
01:37:57 4 support that risk.

01:37:58 5 Q. So if in one year HealthTrust has 70,000  
01:38:02 6 insured lives and the next year it has 77,000 insured  
01:38:08 7 lives -- just to choose a hypothetical -- and the  
01:38:12 8 board has elected, We believe that the appropriate  
01:38:16 9 level is 4.2, what needs to happen to the dollar  
01:38:20 10 amount of the capital fund?

01:38:25 11 A. Well, the 4.2 wouldn't change. But the  
01:38:27 12 dollar amount that relates -- correlates to that  
01:38:31 13 would grow by 10 percent in your example.

01:38:33 14 Q. If the board wanted to maintain the level  
01:38:35 15 of capital adequacy of 4.2, all things being equal  
01:38:40 16 but for the membership numbers, they would need to  
01:38:43 17 grow the fund; is that correct?

01:38:44 18 A. They would need to grow the target capital,  
01:38:47 19 yes.

01:38:47 20 Q. And so when we look at historical dollar  
01:38:54 21 values of net assets or capital for LGC, one of the  
01:39:00 22 things we would need to know in terms of assessing  
01:39:03 23 why a number moved, it would be, for instance, just

01:39:06 1 the membership size?

01:39:08 2 A. Yes.

01:39:08 3 Q. Are there other things that occur to you  
01:39:15 4 that are built into the determination of why one sets  
01:39:19 5 aside capital?

01:39:20 6 A. Well, there are other risks besides the  
01:39:23 7 claims risks that I focused on and other components  
01:39:27 8 of what I'll call rating risk, such as the business  
01:39:31 9 risk and the asset risk.

01:39:33 10 Then there could be other eventualities  
01:39:34 11 that befall an organization that might affect its risk  
01:39:37 12 and its cost. One of them would be litigation.  
01:39:40 13 There might be requirements to develop new products.  
01:39:46 14 There might be an interest in some capital expenditure  
01:39:50 15 for, say, a major computer system. Things that  
01:39:54 16 ordinarily wouldn't be expensed directly in one year's  
01:39:56 17 rate because their costs are disproportionately large  
01:40:01 18 relative to one year's operation. And one way to  
01:40:05 19 fund such efforts is through capital.

01:40:15 20 Q. 31, please. This is the minutes from the  
01:40:32 21 HealthTrust Board of Trustees from July 13, 2002.  
01:40:36 22 Would you look at page 2, please. Page 3, excuse me.

01:40:48 23 Is this the beginning of the member

01:40:51 1 balance policy discussion that went on?

01:40:57 2 A. Yes. It appears to be the discussion  
01:41:00 3 relative to the July meeting in 2002.

01:41:03 4 Q. And at the bottom of the page, is this when  
01:41:06 5 you started to identify certain of the types of risk  
01:41:09 6 that the board should take into account when it  
01:41:17 7 considered capital adequacy?

01:41:19 8 A. Yes.

01:41:19 9 Q. That's fine. Thank you very much.

01:41:25 10 Now, your recollection is that in  
01:41:26 11 July 2002, the board adopted 4.2 as an RBC target?

01:41:31 12 A. It is.

01:41:32 13 Q. Has the topic of capital adequacy and an  
01:41:39 14 appropriate level of capital adequacy for HealthTrust  
01:41:41 15 been an ongoing topic for the board?

01:41:43 16 A. It has. It's been a continuous item of  
01:41:46 17 interest since I've worked for HealthTrust.

01:41:47 18 Q. Since before -- preceding 2002?

01:41:50 19 A. Yes.

01:41:50 20 Q. Always it's been a topic?

01:41:52 21 A. Yes.

01:41:52 22 Q. RBC was just a change in terms of the way  
01:41:56 23 they measured it?

01:41:56 1 A. That's right.

01:41:57 2 Q. Indeed, have you from time to time made very  
01:42:03 3 thorough presentations with regards to board materials  
01:42:06 4 on this topic?

01:42:07 5 A. I have, particularly since the adoption of  
01:42:10 6 the RBC approaching 2002, there have been regular  
01:42:15 7 updates to the board.

01:42:17 8 Q. 177, please. Exhibit 177 is a collection  
01:42:56 9 of materials from your file with regards to various  
01:43:00 10 presentations to the board.

01:43:01 11 Do you recall that?

01:43:03 12 A. Yes.

01:43:04 13 Q. Page 22, please. I understand that this is  
01:43:11 14 a sideways slide, but I just want to call it up to  
01:43:14 15 identify that in 2005, was this a presentation that  
01:43:20 16 was being made to the board on the topic of "How much  
01:43:25 17 is enough?"

01:43:26 18 A. Yes.

01:43:26 19 Q. What prompted that?

01:43:27 20 A. Well, it was part of a periodic interest on  
01:43:30 21 the part of the board and me to -- for the board to  
01:43:35 22 stay abreast and keep thinking about this issue and  
01:43:38 23 not administratively think about it as a static

01:43:42 1 standard that they just used. And also for the  
01:43:45 2 benefits of new board members, it was an educational  
01:43:48 3 step for them.

01:43:49 4 Q. And so next page, please. So is this just  
01:43:53 5 a series of PowerPoint slides? Does this exist in  
01:43:56 6 your file to demonstrate that you were going to the  
01:43:58 7 board in 2005 to cover this topic?

01:44:00 8 A. Yes.

01:44:00 9 Q. Page 20, please. In 2006, did you have a  
01:44:11 10 members' balance policy review for the board?

01:44:14 11 A. Yes.

01:44:15 12 Q. And what sort of presentation did you bring  
01:44:17 13 to them on the topic?

01:44:19 14 A. Well, the presentation would typically  
01:44:24 15 include a restatement of the background of RBC. It  
01:44:28 16 would include a report on current levels of members'  
01:44:33 17 balance. And it would usually include an update on  
01:44:35 18 the comparison group of insurers that we looked at so  
01:44:40 19 that HealthTrust could judge its position relative to  
01:44:45 20 other insurers.

01:44:46 21 And sometimes the comparison was made  
01:44:49 22 to New England health insurers and other times for  
01:44:53 23 other purposes was made with respect to a broader

01:44:54 1 national group of insurers, including insurers with  
01:44:57 2 an asset size similar to HealthTrust.

01:44:59 3 Q. Page 17, please. Do you see that this is  
01:45:07 4 dated in the upper right-hand corner July 1, 2006?

01:45:10 5 Is this a series of screen shots of  
01:45:14 6 slides that you would have presented to the board in  
01:45:17 7 2006 on the topic of "Capital as a measure of  
01:45:21 8 solvency and strength"?

01:45:23 9 A. It is.

01:45:24 10 Q. Page 7, please. Is this the first slide of  
01:45:33 11 many based on a 2008 policy review from July of 2008  
01:45:40 12 on the topic of "Members' balance and risk-based  
01:45:44 13 capital"?

01:45:44 14 A. It is.

01:45:45 15 Q. Page 13, please. Included in that series  
01:45:55 16 of slides from 2008, is this the sort of information  
01:45:58 17 you would have brought to the board with regards to  
01:46:01 18 the RBC ratios --

01:46:04 19 A. It is.

01:46:04 20 Q. -- of companies and various asset sizes and  
01:46:07 21 various allocations?

01:46:09 22 A. It is.

01:46:10 23 Q. And again, what's the point of all that?

01:46:15 1 A. Context. So that they could understand  
01:46:18 2 where -- where the industry was with respect to this  
01:46:22 3 particular measure with respect to capital levels,  
01:46:25 4 and use that as a yardstick to consider in making  
01:46:29 5 their own judgment about capital level appropriate  
01:46:32 6 for HealthTrust.

01:46:33 7 Q. Did you do the same thing in 2010?

01:46:39 8 A. Yes.

01:46:39 9 Q. Thank you. You mentioned the regulatory  
01:46:48 10 minimum standard, the 2.0. That's called a solvency  
01:46:53 11 trigger; is it not?

01:46:54 12 A. Yes.

01:46:55 13 Q. And using that framework as a topic of  
01:47:00 14 discussion, is that used elsewhere for other purposes  
01:47:04 15 such as a target or as a maximum level of surplus, to  
01:47:09 16 your knowledge?

01:47:09 17 A. No.

01:47:09 18 Q. And could -- Why not?

01:47:12 19 A. Well, let me address it starting with  
01:47:16 20 discussion about the so-called 2.0 solvency trigger  
01:47:21 21 level. When that concept was established, it was put  
01:47:26 22 forth in the form of a model law published by the  
01:47:29 23 NAIC which has since been adopted by every or almost

01:47:33 1 every state.

01:47:35 2           And in the model law language itself,  
01:47:39 3 including the law -- that version of the law as it  
01:47:42 4 was enacted in New Hampshire, the law itself states  
01:47:49 5 that 2.0 is a solvency -- well, they don't use the  
01:47:53 6 term "solvency trigger," but they express it as being  
01:47:56 7 a minimum acceptable level of capital and go on  
01:47:58 8 further to say that insurers would be expected to  
01:48:02 9 hold more than that level.

01:48:04 10           Q.    Do you recall the language from the statute  
01:48:06 11 in New Hampshire specifically?

01:48:07 12           A.    I've seen it but I don't recall it word for  
01:48:09 13 word.

01:48:10 14           Q.    Would it refresh your recollection if I put  
01:48:12 15 it up on the screen --

01:48:13 16           A.    Yes.

01:48:14 17           Q.    -- as to what the statute specifically says?

01:48:16 18                         Exhibit 396, please. Chapter 404-F  
01:48:32 19 is entitled "Risk-based capital for insurers."

01:48:32 20                         Is this the statute that you're  
01:48:35 21 making reference to?

01:48:35 22           A.    Yes.

01:48:38 23           Q.    Turn to page 2, please. I would like to

01:48:41 1 look at Section Roman IV. Scroll down, please. I'd  
01:48:49 2 like you to read Roman IV, Mr. Riemer, and tell me  
01:48:54 3 whether or not that's the section you were just  
01:48:56 4 referring to in the statute.

01:48:58 5 A. Okay. The section reads, "An excess of  
01:49:02 6 capital over the amount produced by the risk-based  
01:49:04 7 capital requirement contained in this chapter and the  
01:49:06 8 formulas, schedules, and instructions referenced in  
01:49:09 9 this chapter is desirable in the business of  
01:49:11 10 insurance."

01:49:12 11 Q. "An excess of capital" is desirable;  
01:49:16 12 is that what that says?

01:49:16 13 A. Yes.

01:49:17 14 Q. Go on.

01:49:18 15 A. "Accordingly, insurers should seek to  
01:49:20 16 maintain capital above the RBC levels required by  
01:49:23 17 this chapter."

01:49:25 18 Q. They should seek to maintain capital above  
01:49:27 19 the RBC levels. That would be above the 2.0 and the  
01:49:30 20 other designations you were talking about?

01:49:31 21 A. Yes.

01:49:32 22 Q. Go on.

01:49:32 23 A. "Additional capital is used and useful in

01:49:35 1 the insurance business and helps to secure an insurer  
01:49:38 2 against the various risks inherent in, or affecting,  
01:49:43 3 the business of insurance and not accounted for or  
01:49:46 4 only partially measured by the risk-based capital  
01:49:48 5 requirements contained in this chapter."

01:49:50 6 Q. So that's part of the statutory law of the  
01:49:52 7 State of New Hampshire?

01:49:53 8 A. It is.

01:49:53 9 Q. Applicable to insurers?

01:49:55 10 A. Yes.

01:49:55 11 Q. Do you consider it relevant in your  
01:49:57 12 practice advising HealthTrust with regards to its  
01:50:02 13 levels of capital adequacy?

01:50:04 14 A. I do.

01:50:04 15 Q. Why? It's not an insurance company, right?  
01:50:08 16 That's what we keep hearing.

01:50:09 17 A. HealthTrust is not an insurance company.  
01:50:10 18 But as I reflect on my reading of the very extensive  
01:50:14 19 research that was published by the NAIC and the  
01:50:18 20 American Academy of Actuaries in developing the  
01:50:22 21 concept, I concluded that although HealthTrust is not  
01:50:25 22 an insurance company, the kinds of risks that it takes  
01:50:27 23 on are analogous to those taken on by commercial

01:50:33 1 insurance companies. It's perhaps even more of what  
01:50:35 2 I call a closed-system risk operation than even an  
01:50:38 3 insurance company.

01:50:39 4 Q. Let's linger there for a minute because I'm  
01:50:41 5 not sure I know what you mean. Could you expound on  
01:50:43 6 that for a minute, please.

01:50:44 7 A. By "closed-system insurance operation," I  
01:50:47 8 mean that HealthTrust relies totally and entirely on  
01:50:51 9 its premium income and its assets to sustain itself.  
01:50:54 10 There's no outside source of capital.

01:50:57 11 Insurers can raise capital. There  
01:50:59 12 are various other forms of relief that, if an insurer  
01:51:04 13 needs it, can include such things as what's called a  
01:51:08 14 solvency or a state guaranty association, which  
01:51:11 15 commercial insurers contribute to and can access if  
01:51:14 16 they become severely impaired. HealthTrust has no  
01:51:17 17 such safety valve and so must operate entirely within  
01:51:21 18 its own pool of premium income and assets.

01:51:25 19 Q. Premium income, investment income, assets  
01:51:29 20 on hand?

01:51:29 21 A. Yes.

01:51:30 22 Q. Anything else that it can go to in order to  
01:51:32 23 pay its claims when it has a problem?

01:51:35 1

A. No.

01:51:36 2

Q. That's it?

01:51:36 3

A. That's it.

01:51:38 4

Q. So while this statutory exhortation --

01:51:44 5

statutory suggestion that insurers should maintain

01:51:47 6

capital over 2.0 is not specifically and directly

01:51:51 7

applicable to them, you might argue that it is more

01:51:54 8

applicable --

01:51:55 9

A. Yes.

01:51:55 10

Q. -- to a closed-end system like HealthTrust?

01:51:58 11

A. I do. Conceptually and actuarially it is so.

01:52:02 12

Q. Has the NAIC addressed the topic of whether

01:52:06 13

or not 2.0 is an appropriate level of capital adequacy?

01:52:11 14

A. Well, originally, no. In fact, aside from

01:52:15 15

advice like this and other statements that they've

01:52:18 16

made in other venues that 2.0 is not adequate, the

01:52:22 17

NAIC itself has not promulgated what might be called

01:52:29 18

adequate capital levels of surplus although they are

01:52:31 19

working towards such a construct right now.

01:52:33 20

Q. Have they issued guidance though with

01:52:38 21

regards to the misuse of RBC in rate-making?

01:52:40 22

A. They have.

01:52:41 23

Q. And have you seen that?

01:52:42 1 A. I have.

01:52:42 2 Q. Are you familiar with it?

01:52:43 3 A. I am.

01:52:43 4 Q. Is that -- Exhibit 357, please.

01:53:02 5 Is this the document to which you  
01:53:03 6 were just referring?

01:53:04 7 A. It is.

01:53:04 8 Q. And that -- were you familiar with that in  
01:53:07 9 terms of your approach and analysis of an appropriate  
01:53:14 10 RBC level for HealthTrust?

01:53:15 11 A. Yes.

01:53:16 12 Q. Could you summarize for us basically what  
01:53:21 13 the regulatory guidance suggests with regards to the  
01:53:26 14 use of RBC in rate-making.

01:53:30 15 A. The key takeaways for me in this document  
01:53:34 16 are first of all what it says simply is that in no  
01:53:36 17 way should 2.0 be considered an adequate target. And  
01:53:40 18 the other takeaway is what it says about beginning to  
01:53:43 19 think about what a target might be.

01:53:44 20 They specifically say that there  
01:53:46 21 should be a very low probability that whatever your  
01:53:50 22 target capital is, your actual capital level is,  
01:53:53 23 there should be a very low probability that an

01:53:56 1 impairment event, an adverse experience, would put  
01:53:59 2 you down at the 2.0 solvency trigger level.

01:54:03 3           So first of all, they're saying you  
01:54:04 4 don't want to be anywhere near the trigger level.  
01:54:06 5 You don't want to be anywhere near a point where an  
01:54:09 6 adverse event puts you below the trigger. And in  
01:54:13 7 fact, you want to be high enough so that there's a  
01:54:15 8 very low probability that even a significantly  
01:54:17 9 adverse event will put you down at the solvency  
01:54:25 10 trigger. So my takeaway from this is you want to be  
01:54:28 11 well -- well above 2.0.

01:54:30 12           Q. And so the State of New Hampshire would  
01:54:32 13 encourage an insurance company to be well above 2.0?

01:54:34 14           A. Yes.

01:54:35 15           Q. The NAIC would encourage insurers to be  
01:54:37 16 well above 2.0?

01:54:38 17           A. Yes.

01:54:38 18           Q. And you would consider that relevant --

01:54:40 19           A. I would.

01:54:41 20           Q. -- to advising HealthTrust?

01:54:45 21           A. Yes.

01:54:45 22           Q. Perhaps even more relevant?

01:54:48 23           A. Yes.

01:54:48 1 Q. I want to go back to history for a minute.  
01:54:52 2 There's been a suggestion that in 2002, at the time  
01:54:58 3 that the board adopted the RBC level, that somehow it  
01:55:03 4 made a conscious and intentional decision to double  
01:55:08 5 its capital.

01:55:09 6 Have you heard that suggestion?

01:55:09 7 A. I have.

01:55:10 8 Q. Do you care to comment?

01:55:13 9 A. Yes. I don't see it that way at all. In  
01:55:16 10 2002, HealthTrust was at what was a relative historic  
01:55:21 11 low for what its actual capital was. It was half of  
01:55:24 12 what its traditional target capital was. And it was  
01:55:25 13 at that level following many years at levels higher,  
01:55:29 14 closer to the traditional 20 percent target.

01:55:31 15 Q. Let me stop you there. What you're saying  
01:55:35 16 is if one goes back and looks behind 2002, earlier  
01:55:39 17 than 2002, before the adoption of the RBC level, they  
01:55:46 18 nevertheless had a capital target level, correct?

01:55:48 19 A. Yes.

01:55:48 20 Q. And that was 20 percent of claims?

01:55:50 21 A. That's correct.

01:55:50 22 Q. And you've examined that history and knew  
01:55:54 23 about that history prior to 2002 obviously -- is

01:55:58 1 that --

01:55:58 2 A. Yes.

01:55:58 3 Q. And have they ever been at the 20 percent  
01:56:01 4 level?

01:56:01 5 A. They had been for several years at or about  
01:56:03 6 the 20 percent level.

01:56:04 7 Q. At or above it?

01:56:05 8 A. Yes.

01:56:05 9 Q. And had they ever been below it?

01:56:09 10 A. Yes.

01:56:09 11 Q. And so -- so the suggestion that in 2002  
01:56:13 12 they all of a sudden, for the first time, decided to  
01:56:16 13 double their capital level, is that an accurate charge?

01:56:19 14 A. No. They established a target that was the  
01:56:22 15 same as the target they had already had. They weren't  
01:56:25 16 at that target at the time. But the target didn't  
01:56:27 17 change.

01:56:27 18 Q. Let's linger for a minute on the concept of  
01:56:31 19 target versus actual.

01:56:32 20 A. Yes.

01:56:33 21 Q. Could you explain that.

01:56:34 22 A. Well, the 4.2, which we've referenced, is  
01:56:38 23 the target level of capital. And given the

01:56:40 1 vicissitudes of actual experience as they unfold,  
01:56:44 2 you'll never be at your target because of the kind of  
01:56:48 3 volatility and unpredictability that we've talked  
01:56:53 4 about.

01:56:53 5 Q. So when do you set the target?

01:56:54 6 A. The target is measured every year  
01:56:57 7 financially although we track it throughout the year,  
01:57:00 8 have a rough idea of where capital is relative to the  
01:57:03 9 target.

01:57:04 10 Q. So the board says, We need a certain amount  
01:57:07 11 in a bucket --

01:57:08 12 A. Yes.

01:57:09 13 Q. -- all right? We want to have a certain  
01:57:11 14 amount of capital. We're going to carry around this  
01:57:14 15 5-gallon bucket and that's going to be our -- that's  
01:57:16 16 the capital we want. And we want it full, presumably?

01:57:19 17 A. Yes.

01:57:19 18 Q. What happens during the year as you're  
01:57:21 19 walking around with this 5-gallon bucket of capital?  
01:57:24 20 What happens?

01:57:25 21 A. Well, sometimes water spills out of it, if  
01:57:28 22 you want to continue the bucket analogy, and it's not  
01:57:31 23 full. Other times it overflows.

01:57:33 1 Q. How does water spill out of it?

01:57:34 2 A. Water spills out of it with -- well, if  
01:57:37 3 it's -- it's spilling out because results have been  
01:57:39 4 good and if we call the water capital, then the  
01:57:44 5 bucket overflows and there's more capital than we  
01:57:47 6 needed. Our bucket is our quantity of capital we  
01:57:51 7 want to have.

01:57:52 8 So in good years that bucket overflows  
01:57:54 9 and that means we've got more capital than the target  
01:57:57 10 level. And that's when we consider returning some of  
01:57:59 11 that capital. In other years, it may go the other  
01:58:02 12 way around. The bucket is drawn down because of  
01:58:06 13 adverse experience. And then there's less capital.

01:58:07 14 The point is that although the bucket  
01:58:11 15 is the target and it's a given size, actual experience  
01:58:15 16 will always unfold in a way that we're never able to  
01:58:18 17 constantly maintain that exact quantity of capital.

01:58:21 18 Q. It would be silly to suggest that you could  
01:58:23 19 do that?

01:58:24 20 A. Yes.

01:58:24 21 Q. So just the year, what happens during the  
01:58:28 22 year affects the amount of capital in the bucket?

01:58:31 23 A. Yes.

01:58:32 1 Q. You've heard that the Bureau has suggested a  
01:58:51 2 particular level of capital for LGC, for HealthTrust?

01:58:56 3 A. Yes.

01:58:57 4 Q. Do you find their suggested target good or  
01:59:02 5 bad?

01:59:03 6 A. I find it bad.

01:59:04 7 Q. Why?

01:59:05 8 A. In the sense that it's simply too low.

01:59:08 9 In my opinion, it presents a risk to the operation

01:59:12 10 that's too great, that's inconsistent with the

01:59:14 11 promises that LGC HealthTrust makes to its members

01:59:17 12 when it issues coverage at given premium rates.

01:59:22 13 And that it could be easily breached and, in some

01:59:27 14 circumstances, possibly exhausted. And that's simply

01:59:29 15 not acceptable.

01:59:31 16 Q. Do states regulate as a matter of course

01:59:42 17 the maximum amount of capital that an insurer

01:59:47 18 could -- should keep?

01:59:47 19 A. Some do. It's rare, but a few states do.

01:59:52 20 And the states that do, tend to set maximum capital

01:59:58 21 targets, or maximum capital levels -- not in the

02:00:02 22 sense of a target that I know of. But some states do

02:00:06 23 enact laws regarding maximum capital levels. And in

02:00:09 1 the few instances where that has happened, those  
02:00:10 2 maxima are multiples, many multiples of the 2.0  
02:00:15 3 minimum which exists in all states.

02:00:17 4 Q. You say "multiples." Give us some range,  
02:00:21 5 some ideas of what you're --

02:00:23 6 A. For example, Michigan has a maximum capital  
02:00:26 7 limit expressed as an RBC ratio and that ratio is 10.0.

02:00:31 8 Q. 10.0?

02:00:33 9 A. 10.0, five times the minimum, yes.

02:00:35 10 Q. Any other suggested maximums or regulatory  
02:00:39 11 maximums of which you're aware of?

02:00:40 12 A. Yes. Pennsylvania also sets maxima that  
02:00:43 13 aren't as high as 10, but they're in the range of --  
02:00:47 14 I would have to see a reference to tell for sure, but  
02:00:50 15 in the 5 to 7 RBC ratio range. And their program is  
02:00:54 16 a little bit more complex.

02:00:56 17 Rather than expressing a simple  
02:00:59 18 maximum RBC level, they express a range, kind of a  
02:01:04 19 maximum range as a way of dealing with capital limits.  
02:01:07 20 And the way it works in Pennsylvania is if an insurer  
02:01:10 21 is below the level -- the lower level of that range --  
02:01:18 22 and just to be concrete about it, I'm not sure I've  
02:01:21 23 got the right number.

02:01:22 1 But say in Pennsylvania they  
02:01:23 2 specified this upper capital level range of a ratio  
02:01:26 3 of 5.0 to 7.0. The way they would operate that is  
02:01:30 4 they would say, If an insurer is operating with  
02:01:34 5 capital below the 5.0, they're free to do their  
02:01:37 6 pricing. If an insurer operated between 5 and 7 --  
02:01:43 7 that is, an insurer that had capital corresponding to  
02:01:48 8 an RBC ratio of somewhere between 5 and 7, it would  
02:01:48 9 not be permitted to include this charge in its rates.

02:01:53 10 An insurer operating with a capital  
02:01:55 11 ratio above 7.0 would be responsible in some way for  
02:01:58 12 limiting that and bringing the capital level down to  
02:02:01 13 7.0, either through rate credits or some other  
02:02:04 14 distribution method.

02:02:06 15 Q. Okay.

02:02:07 16 A. And to mention one other, Rhode Island also  
02:02:10 17 has enacted maximum capital rules for four specific  
02:02:14 18 insurers in the state. Those, unlike Michigan and  
02:02:17 19 Pennsylvania, are not expressed as RBC ratios but  
02:02:21 20 rather as, I believe it's percentage of premium.

02:02:25 21 Q. And you are aware that prior to 2009, risk  
02:02:27 22 pools in New Hampshire were unregulated in the sense  
02:02:30 23 of they determined their capital levels themselves?

02:02:33 1 A. Yes.

02:02:33 2 Q. And now we've moved to a regulated  
02:02:36 3 environment?

02:02:37 4 A. Yes.

02:02:37 5 Q. And are you aware of any minimum capital  
02:02:43 6 level that has been set in the State of New Hampshire  
02:02:45 7 for risk pools?

02:02:46 8 A. I am not.

02:02:46 9 Q. And the only one you're aware of regarding  
02:02:50 10 insurers is 2.0; is that right?

02:02:51 11 A. Yes.

02:02:52 12 Q. I take it that you think 4.2 is an  
02:03:09 13 appropriate place for HealthTrust?

02:03:11 14 A. I think it's appropriate. And as I always  
02:03:14 15 explained to the board when talking about this, is  
02:03:17 16 that they need to consider this issue continuously  
02:03:22 17 and evaluate that particular target continuously and  
02:03:25 18 think about the implications of their operation if  
02:03:30 19 they were to change the capital target in some way.

02:03:32 20 For example, some might be interested  
02:03:35 21 in lowering the capital target as a way perhaps to be  
02:03:40 22 more competitive. And there's a narrative that goes --  
02:03:42 23 and a way of thinking that goes with that issue of,

02:03:44 1 is 4.20 the perfect number. Could we have something  
02:03:47 2 a little bit lower. Should it be a little bit  
02:03:50 3 higher. So they're constantly looking at that  
02:03:52 4 question. But I think, given their understanding of  
02:03:55 5 the whole issue of managing capital and also managing  
02:03:59 6 the rating structure, that 4.20 is appropriate.

02:04:02 7 Q. You've heard Mr. Atkinson, for instance,  
02:04:07 8 suggest that 2.1 was an appropriate level of capital  
02:04:11 9 for HealthTrust. You heard that testimony?

02:04:14 10 A. I have.

02:04:14 11 Q. And you've heard him suggest a 95 percent  
02:04:18 12 confidence level?

02:04:18 13 A. Yes.

02:04:19 14 Q. And you've heard him suggest that, Oh, you  
02:04:21 15 know, if you have a bad year, you just reprice?

02:04:23 16 A. Yes.

02:04:24 17 Q. Would you comment on that, please.

02:04:25 18 A. Sure. Why don't I start with the 95 percent  
02:04:27 19 confidence level. As he said in his deposition and  
02:04:30 20 in a couple of different ways in his reports that  
02:04:32 21 I've seen, it's basically expressing a 5 percent  
02:04:38 22 likelihood, the complement of 95 percent, that capital  
02:04:43 23 at that level would not be sufficient.

02:04:45 1 Q. I need to pause there and make sure I  
02:04:47 2 understand. If you're talking about a 95 percent  
02:04:49 3 confidence level, the remainder is 5 percent?

02:04:52 4 A. That's right.

02:04:52 5 Q. So what happens in the 5 percent that is  
02:04:55 6 the unconfident level, I guess?

02:04:57 7 A. Well, if you're saying that 5 percent of  
02:04:59 8 the time that the reserve is not sufficient, it means  
02:05:01 9 it's exhausted.

02:05:02 10 Q. It means it goes away?

02:05:04 11 A. It goes away. And that's an unacceptable  
02:05:08 12 probability of what might be called ruin, in the  
02:05:17 13 insurance industry.

02:05:17 14 Q. Is that a technical term: "ruin"?

02:05:20 15 A. It is, it's a technical term. So as I  
02:05:22 16 understand Mr. Atkinson's 95 percent representation,  
02:05:25 17 it's basically expressing a 5 percent probability of  
02:05:28 18 ruin over some time horizon.

02:05:32 19 Now, with respect to -- there were  
02:05:34 20 other parts to your question about the 2.1 --

02:05:38 21 Q. Right. If you're at 2.1, let's say that  
02:05:42 22 HealthTrust moved to a 2.1 level. While subsequent  
02:05:48 23 events might not be of such a magnitude as to

02:05:51 1 completely ruin the system, but what level of  
02:05:54 2 adversity can a risk pool stand if it's at 2.1?

02:05:59 3 A. Well, in terms of adversity that would put  
02:06:03 4 it below the trigger, virtually none. It might be  
02:06:06 5 called noise. It's about a day and a half of claim  
02:06:09 6 payments.

02:06:09 7 Q. I need to follow you there.

02:06:10 8 A. Sure.

02:06:10 9 Q. The difference between 2.1 and the regulatory  
02:06:14 10 level would be what?

02:06:15 11 A. The difference between 2.1 and 2.0 would  
02:06:18 12 amount to about a day and a half of claim payments.  
02:06:21 13 It's scant. It's nil. It's virtually no difference  
02:06:27 14 at all.

02:06:27 15 Q. And so if -- you being the actuary -- had  
02:06:34 16 miscalculated something to some relatively small  
02:06:37 17 level, what would -- what could happen?

02:06:39 18 A. Well, it would fall below the trigger of 2.0.

02:06:43 19 Q. Relatively quickly?

02:06:44 20 A. Relatively quickly.

02:06:45 21 Q. In less than two days, that's the order of  
02:06:48 22 magnitude that you're talking about --

02:06:49 23 A. Yes.

02:06:50 1 Q. -- between the level that Mr. Atkinson  
02:06:52 2 suggested and the regulatory level that would trigger  
02:06:54 3 action by the Department of Insurance of some kind?

02:06:57 4 A. That's correct.

02:06:58 5 Q. Is there any basis in actuarial science for  
02:07:05 6 the approach that Mr. Coutu took with regards to his  
02:07:08 7 approach to setting a capital adequacy level?

02:07:13 8 A. Well, one of the parts of his testimony that  
02:07:20 9 I listened to with interest was a representation that  
02:07:24 10 he could arrive at an appropriate target capital by  
02:07:29 11 examining the assets and then by such an examination  
02:07:33 12 decide that some of the target capital wasn't needed.  
02:07:36 13 And I just totally disagree with that.

02:07:38 14 The fundamental determination, the  
02:07:41 15 input to target capital, the input to measuring risk,  
02:07:47 16 the inputs in the NAIC formula, have essentially  
02:07:51 17 nothing to do with assets. Marginally so, but  
02:07:54 18 fundamentally the risk exposure and what an  
02:07:58 19 organization might consider as an appropriate level  
02:08:00 20 of capital to manage that risk have nothing to do --  
02:08:04 21 has nothing to do with the asset composition, the  
02:08:08 22 asset maturity.

02:08:09 23 There may be very good reasons for

02:08:10 1 thinking about the design of the portfolio. But the  
02:08:13 2 design of the portfolio has nothing to do with the  
02:08:18 3 level of target capital and the risk -- the  
02:08:21 4 underwriting risk the organization faces.

02:08:23 5 Q. So you would completely reject the idea  
02:08:25 6 that capital can or should be determined by the  
02:08:29 7 structure of the investment portfolio?

02:08:31 8 A. Yes.

02:08:31 9 THE PRESIDING OFFICER: Excuse me,  
02:08:32 10 Mr. Saturley.

02:08:33 11 MR. SATURLEY: Sure.

02:08:34 12 THE PRESIDING OFFICER: Could I have a  
02:08:35 13 point of clarification with the witness?

02:08:36 14 MR. SATURLEY: Of course.

02:08:37 15 THE PRESIDING OFFICER: Mr. Riemer, you  
02:08:38 16 just used the phrase "design the portfolio."

02:08:43 17 THE WITNESS: Yes.

02:08:43 18 THE PRESIDING OFFICER: And by "portfolio,"  
02:08:46 19 do you mean something other than what someone may  
02:08:48 20 have in equities? The portfolio you're referring to  
02:08:53 21 is the spread of -- an explanation of what type of  
02:08:57 22 capital or where funds are within the organization?

02:09:01 23 THE WITNESS: I'm simply referring to the

02:09:04 1 nature, the type, the duration, the categories of  
02:09:09 2 assets. So the design of the portfolio --

02:09:11 3 THE PRESIDING OFFICER: Okay.

02:09:13 4 THE WITNESS: -- okay?

02:09:13 5 THE PRESIDING OFFICER: I understand.

02:09:14 6 Thank you.

02:09:15 7 MR. SATURLEY: Thank you.

02:09:19 8 Q. BY MR. SATURLEY: I missed a step with  
02:09:26 9 regards to Mr. Atkinson's testimony. I was going to  
02:09:28 10 ask you about the repricing idea.

02:09:30 11 A. Yes.

02:09:30 12 Q. Could you comment on that for a minute.

02:09:32 13 A. Well, if repricing is offered as a reason  
02:09:36 14 for feeling more secure about a lower level of  
02:09:39 15 capital, I think there are a couple of problems with  
02:09:42 16 that concept. Yes, the program is repriced every  
02:09:45 17 year. In fact, recognizing that there are two  
02:09:48 18 different pools, there are a couple of repricing  
02:09:50 19 cycles that occur within the year.

02:09:52 20 But the issue with respect to  
02:09:54 21 repricing or somehow the ability to reprice as a way  
02:09:59 22 to ameliorate the desired -- or the target level of  
02:10:03 23 capital, reduce that, doesn't hold a lot of water in

02:10:06 1 my opinion.

02:10:07 2 First of all, because of the way that  
02:10:08 3 the pricing cycles work, you could be in the pricing  
02:10:11 4 cycle for next year before you fully comprehended  
02:10:15 5 that there has been an attack on surplus, that there  
02:10:20 6 have been substantial losses. And in that case,  
02:10:23 7 you're kind of too late to do it.

02:10:25 8 And in any event, even if you're  
02:10:27 9 aware that there's been capital erosion and there's a  
02:10:31 10 need to correct for that in the pricing, that presents  
02:10:34 11 marketplace issues in a couple ways.

02:10:37 12 One, it generates the need to build  
02:10:39 13 into the rates something to deal with that issue,  
02:10:43 14 which presents issues about renewal of existing  
02:10:46 15 customers or attraction for other potential customers,  
02:10:51 16 and in fact, may scare off your customer base if  
02:10:54 17 there's -- if there's a sense that you're losing  
02:10:58 18 money, now undercapitalized, and maybe at risk of  
02:11:02 19 significant impairment.

02:11:03 20 Q. All right. Let me -- let me catch up with  
02:11:05 21 you.

02:11:06 22 A. Sure.

02:11:06 23 Q. First thing you suggested was that the

02:11:10 1 timing of repricing may be a problem to have it be an  
02:11:16 2 effective mechanism?

02:11:17 3 A. Yes.

02:11:17 4 Q. And I take it that that -- because when you  
02:11:19 5 get around to repricing, you may not even understand  
02:11:23 6 that there has been -- and I think you called it an  
02:11:27 7 attack on capital?

02:11:27 8 A. Yes. I could give an example.

02:11:29 9 Q. Please.

02:11:31 10 A. Okay. We, last October, priced the so-called  
02:11:38 11 July pool, which is 80 percent of HealthTrust's  
02:11:40 12 business. We issued renewal rates for the July 2012  
02:11:43 13 pool in October of 2011. And that's the so-called  
02:11:48 14 guaranteed maximum rate issuance.

02:11:50 15 So we issued guaranteed rates to  
02:11:53 16 80 percent of those 70,000 lives in October 2011 to  
02:11:58 17 take effect July 2012. We did that based on our  
02:12:02 18 understanding of experience in the performance at the  
02:12:04 19 time. If subsequently to October 2011 and before  
02:12:07 20 July 2012, the bottom fell out of something,  
02:12:13 21 healthcare trend, some sort of morbidity issue, some  
02:12:15 22 sort of asset performance issue, we're stuck with  
02:12:17 23 those rates that were guaranteed.

02:12:18 1 Q. Let me pause you there for a minute to make  
02:12:21 2 sure I follow. When you're repricing -- when you're  
02:12:23 3 pricing in October of 2011 for the July 2012 program,  
02:12:29 4 that's when the pricing will take effect?

02:12:30 5 A. Yes.

02:12:31 6 Q. Now I'm back here in October 2011. How  
02:12:36 7 much experience do I have with the existing pool that  
02:12:38 8 I'm right in now?

02:12:39 9 A. Virtually none.

02:12:40 10 Q. Virtually none?

02:12:41 11 A. Yes.

02:12:41 12 Q. So if there's a need to reprice, if there  
02:12:44 13 is an attack on capital, as you call it, do I know  
02:12:47 14 it's occurred?

02:12:49 15 A. I'm sorry?

02:12:50 16 Q. If there has been a reason to reprice  
02:12:53 17 because of some attack on capital, as you called it,  
02:12:56 18 in October of 2011, how much warning do I have of it?

02:13:00 19 A. Well, if it's begun to manifest by then,  
02:13:03 20 you try to assess it and deal with it; but if it  
02:13:09 21 hasn't manifested by then, then there's very little  
02:13:11 22 you can do and you do nothing.

02:13:13 23 Q. That was the first flaw, I guess I'd call

02:13:17 1 it, in the repricing model that you identified as the  
02:13:21 2 timing. Then you went on to identify another flaw,  
02:13:24 3 and I think you called it the marketplace flaw or --

02:13:26 4 A. Right.

02:13:27 5 Q. -- something? Could you explain that in a  
02:13:29 6 little more detail.

02:13:30 7 A. Yes. The marketplace concern is that if you  
02:13:32 8 use pricing or the ability to reprice as a defense  
02:13:36 9 mechanism against loss of capital or poor results,  
02:13:40 10 then you're making your price uncompetitive.

02:13:44 11 Q. You're making your price uncompetitive?

02:13:46 12 A. Uncompetitive.

02:13:48 13 Q. How so?

02:13:49 14 A. Because you have to add extra layers of  
02:13:51 15 cost into the price to rebuild capital, to stem the  
02:13:55 16 losses that are unfolding. And so yes, pricing and  
02:14:01 17 re-rating would present an opportunity to do that,  
02:14:03 18 but there's a real issue about what that does in the  
02:14:07 19 marketplace. Will you lose business? Will you be  
02:14:12 20 unable to attract new business?

02:14:14 21 Q. So while it is an opportunity in the sense  
02:14:16 22 that it does exist, do you consider it a realistic  
02:14:18 23 defensive mechanism?

02:14:20 1 A. No.

02:14:20 2 Q. You mentioned the GMR, the guaranteed  
02:14:31 3 maximum rate. Would you talk a little bit more about  
02:14:33 4 the significance, the scope of the exposure and the  
02:14:39 5 risk that HealthTrust takes on whenever it issues a  
02:14:42 6 guaranteed maximum rate.

02:14:43 7 A. Yes. It's something I always look at  
02:14:46 8 every -- every year, and I advise the board about.  
02:14:50 9 And the best way I can express it is with the live  
02:14:53 10 example, the most recent issuance of guaranteed  
02:14:57 11 maximum rates in October 2011.

02:14:59 12 What I told the board and the  
02:15:01 13 computation I do is I say, Here we are in October 2011.  
02:15:05 14 We issued rates three months ago, or four months ago,  
02:15:09 15 where we began a rating four months ago for July 1st,  
02:15:13 16 2011, which we're barely into, has nine months to  
02:15:17 17 run. We've just guaranteed rates for the year that  
02:15:22 18 begins the following July, July 2012, that will run  
02:15:25 19 into mid 2013.

02:15:28 20 Also at that point in time, October  
02:15:30 21 2011, simultaneously with the issuance of the  
02:15:33 22 so-called GMR, we would have issued renewal rates for  
02:15:36 23 the January pool, which is 20 percent of the business,

02:15:38 1 for January 2012.

02:15:39 2                   So the calculation I do at October  
02:15:42 3 2011 is to say, As of today with the issuance of the  
02:15:46 4 guaranteed rate for next July and the January rates  
02:15:49 5 for the coming January, what is the extent of the  
02:15:53 6 promises that HealthTrust has made as of that date?

02:15:57 7                   And the measurement is they promised  
02:16:01 8 the July pool rates from that date through July 1 of  
02:16:05 9 2012. They promised a full year of July rates from  
02:16:09 10 2012 to 2013. They promised a full year of rates for  
02:16:14 11 the January 2012 pool. When you add up --

02:16:18 12           Q.     And what are the lines that they're issuing  
02:16:20 13 these rates for?

02:16:20 14           A.     Medical primarily and some dental.

02:16:24 15           Q.     Okay.

02:16:26 16           A.     When you add up the projected claims  
02:16:29 17 associated with all those promises, in October 2011,  
02:16:35 18 is \$625 million.

02:16:36 19           Q.     In October of 2011?

02:16:38 20           A.     Yes.

02:16:38 21           Q.     The Board of Directors of Local Government  
02:16:41 22 Center with regard to the HealthTrust pool were  
02:16:43 23 making a \$625 million guarantee?

02:16:46 1 A. They are.

02:16:47 2 Q. So a \$625 million bet on your numbers?

02:16:51 3 A. Yeah.

02:16:51 4 Q. How does that make you feel?

02:16:53 5 A. I lose sleep over it. I'm very conscious  
02:16:56 6 of the enormity of that number and of the  
02:17:01 7 responsibility that I have to advise the board and  
02:17:05 8 the responsibility they have to make that decision.  
02:17:07 9 And key to that decision is their capital structure,  
02:17:11 10 capital level.

02:17:12 11 Q. Tell me what happens with a bet that size,  
02:17:17 12 a guarantee that size. What happens if you're off by  
02:17:20 13 a little?

02:17:21 14 A. Well, you can just do some math on some  
02:17:24 15 possible variations. The key number that I look at  
02:17:27 16 that kind of embraces the worst possible event would be  
02:17:34 17 a value that might wipe out capital. That's unlikely.

02:17:37 18 But at more modest levels of adversity,  
02:17:40 19 for example, at the \$625 million promise, something  
02:17:44 20 like 6-1/2 -- or a 6-1/2 percent deviation from  
02:17:49 21 projected trend would cost about \$40 million, which  
02:17:54 22 is the amount that the Bureau has proposed as maximum  
02:17:58 23 capital for HealthTrust.

02:17:59 1 Q. Let me make sure I've got that. The Bureau  
02:18:02 2 has proposed a level of around 40 plus or minus?

02:18:05 3 A. Yes.

02:18:05 4 Q. That's the -- what they suggest is an  
02:18:07 5 appropriate amount of capital --

02:18:09 6 A. Yes.

02:18:09 7 Q. -- for the HealthTrust program?

02:18:10 8 A. Yes.

02:18:10 9 Q. HealthTrust Board of Directors made a  
02:18:14 10 \$625 million guarantee in October of 2011 --

02:18:18 11 A. Yes.

02:18:18 12 Q. -- to pay all the claims of 70 or 75,000  
02:18:22 13 dependent lives. And how much of a variance would  
02:18:26 14 wipe out that proposed level of net assets?

02:18:28 15 A. Somewhere between a 6 and 7 percent variance  
02:18:31 16 in the projected cost.

02:18:37 17 Q. Is that what you would call -- Where does  
02:18:44 18 that fit into this magnitude of a significant event  
02:18:47 19 like a pandemic? Is that what it would take to be a  
02:18:50 20 6 or 6-1/2 percent variation?

02:18:52 21 A. No. No. 6 to 6-1/2 percent would be  
02:18:56 22 unusual, but not outside the range of adversity that  
02:19:00 23 HealthTrust has seen on occasion.

02:19:01 1 Q. HealthTrust has seen this level of adversity  
02:19:04 2 in the past?

02:19:05 3 A. Yes.

02:19:06 4 THE PRESIDING OFFICER: Excuse me,  
02:19:07 5 Mr. Saturley. Can you take your exhibit down. It  
02:19:11 6 makes it difficult from our perspective to see the  
02:19:14 7 witness, or more difficult, I should say.

02:19:20 8 MR. SATURLEY: I apologize.

02:19:20 9 THE PRESIDING OFFICER: Thank you.

02:19:39 10 (Discussion off the record.)

02:19:39 11 Q. BY MR. SATURLEY: Have you seen that  
02:19:41 12 magnitude of adversity in HealthTrust's experience?

02:19:44 13 A. Yes.

02:19:44 14 Q. In the past?

02:19:44 15 A. Yes.

02:19:45 16 Q. They've suffered that level of adversity in  
02:19:48 17 the past?

02:19:48 18 A. Yes.

02:19:48 19 Q. Just to play out the string, what would  
02:19:56 20 happen with a pandemic? That, I take it, would  
02:20:02 21 exceed that level?

02:20:03 22 A. Yes.

02:20:18 23 Q. There's been some suggestion that HealthTrust

02:20:23 1 somehow did a recalculation of its RBC or something  
02:20:25 2 in 2010. You've heard that --

02:20:29 3 A. Yes.

02:20:29 4 Q. -- testimony? Could you explain what  
02:20:31 5 actually happened in 2010.

02:20:33 6 A. Sure. That occurred in the context of the  
02:20:38 7 guaranteed maximum rate which we talked about. For a  
02:20:44 8 number of years, HealthTrust has dealt with issuing a  
02:20:51 9 guaranteed maximum rate, making a rate promise so far  
02:20:53 10 in advance by building into the rate itself a margin  
02:20:59 11 to protect against the risk that -- of losses inherent  
02:21:05 12 in making such a guarantee so far in advance. Insurers  
02:21:10 13 don't normally do this.

02:21:11 14 So the traditional practice for  
02:21:17 15 protecting against that exposure was, as I said, to  
02:21:20 16 build a layer of costs into the guaranteed maximum  
02:21:26 17 rate calculation. And then the following spring when  
02:21:27 18 the so-called revisit calculation is made and we're  
02:21:32 19 closer to a normal rating cycle and the rating for  
02:21:35 20 the imminent July 1, we no longer need that level of  
02:21:39 21 risk charge in the rate.

02:21:41 22 And of course, if in making the  
02:21:43 23 guarantee, the risk had materialized, then that

02:21:47 1 charge would have been used and been appropriate.  
02:21:49 2 But if it hadn't materialized, then that layer would  
02:21:52 3 come out of the rate, and that resulted in the  
02:21:55 4 phenomenon of the revisit being lower than the GMR by  
02:22:01 5 the amount of that margin. And there may be other  
02:22:05 6 reasons that might tend to make the revisit lower  
02:22:07 7 than the GMR.

02:22:09 8 In any event, we heard a strong input  
02:22:12 9 from members -- members of the board and staff through  
02:22:18 10 members of the community served that they're unhappy  
02:22:21 11 with that. They did not like having a revisit rate  
02:22:25 12 in the spring that was lower than the GMR rate that  
02:22:28 13 was promulgated in the fall. And so we were asked to  
02:22:32 14 find a solution to that.

02:22:35 15 And the solution we came up with was  
02:22:36 16 basically to make a shift in thinking about protecting  
02:22:40 17 against the risk inherent in doing a GMR forecast so  
02:22:44 18 far in advance. The shift was to remove the risk  
02:22:47 19 protection from the rate itself and to provide the  
02:22:52 20 risk protection through the maintenance of additional  
02:22:55 21 capital. And we did that, in fact, for the first  
02:22:57 22 time with respect to the July 2012 GMR. And so that  
02:23:02 23 was the thinking that led to that.

02:23:05 1 Q. Instead of having such a big price protection  
02:23:10 2 in the GMR, you basically brought that pricing level  
02:23:14 3 down and shifted it into the analysis of capital?

02:23:20 4 A. We shifted it into capital. And the result  
02:23:23 5 was that without that component in there, revisit was  
02:23:28 6 and is more likely to come in closer to the guaranteed  
02:23:33 7 maximum rate, the result which the customers were  
02:23:34 8 demanding.

02:23:36 9 Q. As part of your report, did you prepare a  
02:23:39 10 diagram that would show some of the various RBC  
02:23:43 11 levels and where your recommendations would come in?

02:23:46 12 A. I did.

02:23:48 13 MR. SATURLEY: I'd like to call up 269,  
02:23:49 14 please. Page 10, please.

02:24:07 15 MR. VOLINSKY: Excuse me.

02:24:09 16 THE PRESIDING OFFICER: Mr. Volinsky.

02:24:10 17 MR. VOLINSKY: This is ID only. But since  
02:24:13 18 Mr. Riemer is testifying, we would agree to strike  
02:24:15 19 the ID.

02:24:20 20 THE PRESIDING OFFICER: Presuming there's  
02:24:21 21 no objection --

02:24:23 22 MR. SATURLEY: No.

02:24:23 23 THE PRESIDING OFFICER: -- we are striking

02:24:25 1 the ID from LGC 269. It's now a full exhibit.

02:24:30 2 (LGC 269 admitted into evidence.)

02:24:54 3 THE WITNESS: Is there any way to get an  
02:24:57 4 intermediate size that is larger without cutting it  
02:25:01 5 all off?

02:25:01 6 THE PRESIDING OFFICER: Do you have a hard  
02:25:02 7 copy?

02:25:03 8 THE WITNESS: I do.

02:25:04 9 MR. SATURLEY: I can put the hard copy on  
02:25:05 10 this, and we can try it that way.

02:25:08 11 THE WITNESS: Okay.

02:25:08 12 MR. SATURLEY: Hang on to yours.

02:25:45 13 THE PRESIDING OFFICER: Mr. Riemer, if I  
02:25:46 14 might be so bold, having been here, if you remained  
02:25:50 15 at the witness table --

02:25:52 16 THE WITNESS: Yes.

02:25:52 17 THE PRESIDING OFFICER: -- and just looked  
02:25:53 18 at your hard copy --

02:25:55 19 THE WITNESS: Okay.

02:25:56 20 THE PRESIDING OFFICER: -- you have a good  
02:25:58 21 perspective of that. And everyone else who would  
02:26:00 22 want to see that can see it. Or the crucial people  
02:26:03 23 already have one in their --

02:26:05 1 THE WITNESS: All right.

02:26:06 2 MR. SATURLEY: Let's just work with what's  
02:26:07 3 in front of you.

02:26:09 4 THE WITNESS: Okay. This diagram is  
02:26:11 5 intended to be a comprehensive view of the  
02:26:15 6 significance of different RBC levels, whether of the  
02:26:20 7 NAIC structure, of other insurers, of the small  
02:26:25 8 number of states I mentioned that have enacted maxima  
02:26:30 9 for capital.

02:26:31 10 So it's intended in one diagram to  
02:26:34 11 bring together this world of RBC ratios and who does  
02:26:38 12 what with them, and it runs on a scale from 0 to 10.  
02:26:43 13 And a key focus -- I'll focus on the left side of the  
02:26:46 14 diagram first.

02:26:47 15 The key focus there initially is the  
02:26:50 16 bottom few rows, which show the NAIC trigger levels.  
02:26:57 17 So starting at 2.0, that's the first regulatory  
02:27:03 18 threshold, that if you fall below that level, it's  
02:27:06 19 the one that requires a correction plan be submitted  
02:27:11 20 to the Insurance Department.

02:27:12 21 And then of the variously greater  
02:27:14 22 interventions that occur at levels below that 2.0,  
02:27:17 23 going down to the most significant one, 0.70,

02:27:21 1 basically mandating regulatory takeover for insurers  
02:27:27 2 at that level. So that sets the regulatory framework  
02:27:30 3 and makes it clear that it's a minimum level of capital  
02:27:33 4 managed through the State Insurance Departments.

02:27:42 5 The next levels going up all represent  
02:27:45 6 some key RBC ratio that means something significant.  
02:27:49 7 The first one above the regulatory threshold is at 3.0,  
02:27:54 8 it's the Blue Cross Blue Shield National Association  
02:27:57 9 so-called concern stage. This is one of a series of  
02:28:00 10 RBC levels that are particularly important to Blue  
02:28:04 11 Cross plans, such as Anthem here in New Hampshire.  
02:28:06 12 They are all licensed by Blue Cross Blue Shield  
02:28:12 13 National Association and have to follow the mandates  
02:28:14 14 of that licensing organization.

02:28:16 15 So I'll be mentioning a few of those.  
02:28:17 16 But the first one is the concern stage. This is when  
02:28:20 17 the national association is worried about an insurer.

02:28:24 18 Also, I forgot to mention at the 2.0  
02:28:26 19 level, which is the general U.S. regulatory minimum,  
02:28:30 20 2.0 level is the level also at which the Blue Cross  
02:28:35 21 Blue Shield Association would pull the trademarks  
02:28:37 22 from any local Blue Cross plan if it's at that low a  
02:28:41 23 capital level.

02:28:42 1 Now, going up the scale on the left,  
02:28:44 2 the next key level is 3.75. That's where a Blue Cross  
02:28:50 3 Blue Shield plan would be subject to intensified  
02:28:52 4 monitoring by the national association if they were  
02:28:54 5 at that level.

02:28:59 6 Moving up, again on the left, the  
02:29:00 7 next key point is 5.0. That is the monitoring  
02:29:03 8 threshold for a Blue Cross Blue Shield plan. That's  
02:29:07 9 a level where the national association would begin to  
02:29:09 10 focus on what's happening within the local Blue's plan.

02:29:14 11 The next level, I'll pair it with, if  
02:29:18 12 I can read, Pennsylvania; 5.50 is the so-called lower  
02:29:25 13 ceiling in Pennsylvania. And I can jump back up to  
02:29:29 14 stick with Pennsylvania to 9.50, that's the upper  
02:29:33 15 value of the ceiling in Pennsylvania.

02:29:36 16 This is just a way of saying that  
02:29:38 17 Pennsylvania law for the Blue Cross plan in  
02:29:42 18 Pennsylvania -- I don't believe it's all insurers --  
02:29:45 19 Pennsylvania specifies a range of risk-based capital  
02:29:50 20 from 5.50 to 9.50 for the Pennsylvania Blues. So  
02:29:57 21 9.50 would be considered the maximum. And as I  
02:29:59 22 mentioned before, 5.50 would be considered the level  
02:30:03 23 which would be permitted. Anything between 5.50 and

02:30:06 1 9.50. But the insurer would not be allowed to make a  
02:30:10 2 risk charge in rates if they were in that range.

02:30:13 3 The next key point is 7.0. Now,  
02:30:20 4 Massachusetts has also not enacted into law, but  
02:30:24 5 produced the recommendation out of a study provided  
02:30:27 6 by their healthcare finance agency within the state.  
02:30:30 7 They've also developed a range for maximum capital  
02:30:36 8 ranging from 7.0 to 9.0. I'll talk a little bit  
02:30:43 9 about that in a second. And finally, at 10.0,  
02:30:45 10 there's the Michigan maximum. And again, this only  
02:30:49 11 applies to the Michigan Blues plans of 10.0. So  
02:30:54 12 that's kind of, as I said, the universe of RBC ratios  
02:30:57 13 and who uses them and how they use them.

02:30:59 14 And on the right side for reference  
02:31:02 15 are some RBC ratios for actual companies or proposed  
02:31:08 16 or actual companies. At the top, I think that says  
02:31:13 17 5.15. That's the average RBC ratio in 2008, I believe  
02:31:19 18 it is, that was reported in the Massachusetts study  
02:31:23 19 that was undertaken and resulted in the Massachusetts  
02:31:27 20 healthcare finance agency recommendation that if  
02:31:29 21 there's to be a ceiling on surplus, it be between 7.0  
02:31:32 22 and 9.0.

02:31:34 23 And the insurers they looked at when

02:31:37 1 they did that study were at an average of 5.15. And  
02:31:40 2 I should also point out that most of those -- most of  
02:31:42 3 the health insurance in Massachusetts is through  
02:31:46 4 nonprofits. 4.57 shows there. And that's the  
02:31:51 5 average of New Hampshire health insurers other than  
02:31:56 6 the pools in 2009, I believe, 4.37.

02:32:00 7 Then you see the kind of gray smudged  
02:32:04 8 line at 4.20, that's the LGC HealthTrust target.  
02:32:07 9 And then finally down at the bottom at 2.07 is the  
02:32:11 10 value recommended by the Bureau for LGC HealthTrust.

02:32:18 11 Q. You mentioned the Massachusetts study.

02:32:20 12 A. Yes.

02:32:20 13 Q. Do you give that some weight in terms of  
02:32:26 14 your analysis in terms of the appropriateness of the  
02:32:27 15 4.2?

02:32:28 16 A. I do. I give it a lot of weight. It's a  
02:32:30 17 study, a comprehensive exhaustive study published in  
02:32:33 18 a 220-page report that the was done by healthcare  
02:32:36 19 finance professionals using lots of data and resulted  
02:32:42 20 in the conclusion I talked about. So I give that a  
02:32:44 21 great deal of weight.

02:32:45 22 Q. Just call 356, please. Is this the cover  
02:32:54 23 letter -- excuse me -- the cover of the study that

02:32:57 1 you are mentioning?

02:32:59 2 A. It is.

02:33:01 3 Q. To summarize, Mr. Riemer, your opinion of  
02:33:10 4 the board's proposed level with regards to the  
02:33:14 5 capital adequacy for HealthTrust?

02:33:16 6 A. I'm sorry. Which proposed level?

02:33:18 7 Q. The Bureau's?

02:33:19 8 A. The Bureau. Yes. My opinion is it's  
02:33:23 9 totally inadequate. And I could not recommend such a  
02:33:26 10 level to the board.

02:33:28 11 Q. To summarize your opinion with regards to  
02:33:31 12 the existing 4.2 HealthTrust level?

02:33:35 13 A. I think it's a reasonable, prudent target  
02:33:37 14 capital level.

02:33:45 15 MR. SATURLEY: I have no further questions  
02:33:46 16 for Mr. Riemer, Mr. Mitchell.

02:33:47 17 THE PRESIDING OFFICER: Thank you,  
02:33:49 18 Mr. Saturley.

02:33:51 19 Mr. Gordon, do you have any questions  
02:33:53 20 at this time?

02:33:53 21 MR. GORDON: No.

02:33:54 22 THE PRESIDING OFFICER: And Mr. Howard, sir?

02:33:55 23 MR. HOWARD: No thank you, sir.

02:33:57 1 THE PRESIDING OFFICER: Mr. Volinsky, on  
02:33:59 2 cross-examination.

02:34:16 3 CROSS-EXAMINATION

02:34:16 4 BY MR. VOLINSKY:

02:34:37 5 Q. In a general sense, Mr. Riemer, am I  
02:34:39 6 correct to say that if the Local Government Center  
02:34:44 7 board wants to increase its level of net assets, it  
02:34:50 8 does that by increasing the premium spend?

02:34:55 9 A. That's the intentional way to do it.

02:34:58 10 Q. That's what I mean. I'm just talking about  
02:35:00 11 the intentional way.

02:35:01 12 A. That's correct.

02:35:02 13 Q. So you have a -- you must have 10 or 12  
02:35:06 14 factors that go into building the medical premium  
02:35:09 15 rates; is that about right?

02:35:10 16 A. Yes.

02:35:11 17 Q. And one of those factors is called risk?

02:35:13 18 A. Yes.

02:35:13 19 Q. And in order to intentionally -- now, I'm  
02:35:17 20 on the intentional side -- to intentionally build net  
02:35:21 21 assets, the board would enhance the risk  
02:35:27 22 percentage --

02:35:27 23 A. Yes.

02:35:28 1 Q. -- correct?

02:35:29 2 In the recent change of how the RBC  
02:35:43 3 is calculated, which I think is 2010, correct, is when  
02:35:48 4 the change was made?

02:35:49 5 A. Year end 2010, yes.

02:35:52 6 Q. Year end 2010. The board switched from  
02:35:55 7 using a particular factor to represent the inherent  
02:36:01 8 risk in predicting a GMR for a longer period of time,  
02:36:07 9 took that away --

02:36:08 10 A. Yes.

02:36:08 11 Q. -- and instead it enhanced the amount of  
02:36:12 12 net capital, correct?

02:36:13 13 A. Yes.

02:36:13 14 Q. And when it decided to enhance that net  
02:36:18 15 capital to cover for the GMR, it raised premiums a  
02:36:23 16 little bit to build that enhancement; fair statement?

02:36:27 17 A. No, not actually. I think the way it  
02:36:30 18 transpired is that there was at that time capital,  
02:36:35 19 excess capital, that would have been excess capital  
02:36:37 20 under a kind of a preenhancement --

02:36:39 21 Q. Okay.

02:36:40 22 A. -- mode of thinking. So some of that  
02:36:43 23 folded into supporting the new higher capital level

02:36:46 1 rather than through a premium charge to do that.

02:36:48 2 Q. Got it. So the GMR enhanced risk premium,  
02:36:56 3 when that was in place, that was charged to those  
02:37:01 4 members who participated in the GMR program --

02:37:05 5 A. Yes.

02:37:05 6 Q. -- correct? It was in their premium?

02:37:07 7 A. It was in their GMR premium.

02:37:10 8 Q. Right. And those are what we would call  
02:37:13 9 the July pool?

02:37:14 10 A. Yes.

02:37:14 11 Q. And separate from the July pool, there's a  
02:37:17 12 January pool?

02:37:17 13 A. Yes.

02:37:18 14 Q. January pool never used this GMR modality?

02:37:22 15 A. That's correct.

02:37:23 16 Q. So the January pool was never charged the  
02:37:26 17 GMR enhanced risk premium?

02:37:29 18 A. That's correct.

02:37:31 19 Q. And what you've -- what LGC has done in  
02:37:35 20 2010 is it stopped using the GMR enhanced risk  
02:37:40 21 premium --

02:37:41 22 A. Yes.

02:37:41 23 Q. -- and instead holds extra capital?

02:37:48 1 A. Yes.

02:37:48 2 Q. Some of that extra capital comes from those  
02:37:51 3 members who were on the January schedule and who  
02:37:53 4 never received GMR rates, correct?

02:37:59 5 A. No. It's not correct.

02:38:00 6 Q. Some of the net capital that was enhanced  
02:38:05 7 could have been returned to the January pool members,  
02:38:12 8 had it not been used to increase the overall pool of  
02:38:17 9 net assets to cover for the GMR enhanced risk rate,  
02:38:23 10 correct?

02:38:23 11 A. No, that's not correct.

02:38:27 12 Q. Okay. We agree, do we not, that with the  
02:38:46 13 GMR, that rate is issued in October of each year --

02:38:52 14 A. Yes.

02:38:52 15 Q. -- essentially?

02:38:53 16 A. Yes.

02:38:53 17 Q. And then trued up in the springtime of each  
02:38:56 18 year?

02:38:56 19 A. Yes.

02:38:57 20 Q. So it is, in essence, repriced in the  
02:39:00 21 springtime?

02:39:01 22 A. It is.

02:39:01 23 Q. Switching topics a little bit. You offered

02:39:15 1 testimony about Mr. Atkinson's recommended stochastic  
02:39:21 2 model at 95 percent --

02:39:23 3 A. Yes.

02:39:23 4 Q. -- correct?

02:39:25 5 And did you listen or watch when  
02:39:28 6 Atkinson testified last week?

02:39:31 7 A. In part I did, yes.

02:39:32 8 Q. So did you hear his explanation of what is  
02:39:39 9 meant when a stochastic model using 95 percent misses  
02:39:46 10 during that 5 percent?

02:39:48 11 A. I heard it. I'm not sure I understood it.

02:39:50 12 Q. But your interpretation of that model is  
02:39:53 13 that if you miss during that 5 percent, it completely  
02:39:57 14 wipes out and exhausts the net assets, right?

02:40:00 15 A. That's what he said in his deposition --  
02:40:02 16 his deposition and in one of his reports.

02:40:05 17 Q. And if he said, here under oath on the  
02:40:09 18 stand, that it could be a penny off up or down and  
02:40:13 19 still be part of that 5 percent, would you have heard  
02:40:16 20 that part?

02:40:17 21 A. I heard the part about the penny, but I don't  
02:40:20 22 understand what it means.

02:40:21 23 Q. All right. You have worked with the Local

02:40:40 1 Government Center HealthTrust either in its LGC form  
02:40:43 2 or its predecessor form since 1988; is that right?

02:40:46 3 A. Yes.

02:40:46 4 Q. You started out on the account when you  
02:40:47 5 were you a consultant for Watson Wyatt?

02:40:49 6 A. That's right.

02:40:50 7 Q. And then when you left Watson Wyatt in  
02:40:53 8 about '03, the account came with you?

02:40:57 9 A. Well, for two years it was still with  
02:40:59 10 Watson Wyatt, and I was subcontracting to Watson  
02:41:04 11 Wyatt. And then it came directly with me in 2005.

02:41:06 12 Q. And that two years corresponded to your  
02:41:11 13 noncompete?

02:41:12 14 A. That's correct.

02:41:12 15 Q. And you now manage the LGC actuarial  
02:41:16 16 consulting work out of your own company?

02:41:19 17 A. Yes.

02:41:19 18 Q. And you're a solo company?

02:41:22 19 A. Yes.

02:41:22 20 Q. You don't have any staff?

02:41:23 21 A. No.

02:41:24 22 Q. And as far as you know, your work has never  
02:41:29 23 been evaluated prior to the expert opinions in this

02:41:33 1 case by an outside actuary, right?

02:41:38 2 A. I don't believe so.

02:41:39 3 Q. And as far as you know, the Local Government  
02:41:42 4 Center and its predecessors never went to an RFP or  
02:41:47 5 bidding process to see if there were other actuaries  
02:41:50 6 who could also provide consulting actuarial work  
02:41:55 7 instead of you?

02:41:55 8 A. Not as far as I know.

02:41:57 9 Q. Let's talk about what you do as an actuary  
02:42:01 10 for the Local Government Center. You help them reach  
02:42:07 11 decisions on premiums or rates, correct?

02:42:12 12 A. Yes.

02:42:12 13 Q. You serve as an expert in this proceeding?

02:42:16 14 A. Yes.

02:42:16 15 Q. You served as an expert in the firefighters  
02:42:19 16 proceeding, correct?

02:42:21 17 A. Yes.

02:42:21 18 Q. Submitted an affidavit in that proceeding?

02:42:23 19 A. I did.

02:42:24 20 Q. You've prepared testimony for the New  
02:42:28 21 Hampshire House of Representatives; have you not?

02:42:30 22 A. Yes.

02:42:31 23 Q. You've prepared testimony for the New

02:42:34 1 Hampshire Senate?

02:42:35 2 A. Yes.

02:42:35 3 Q. You've worked with PR professionals for the  
02:42:40 4 Local Government Center to help prepare testimony for  
02:42:44 5 others who testified before our Legislature?

02:42:47 6 A. Yes.

02:42:48 7 Q. You've never testified before any other  
02:42:51 8 Legislature in the country, have you?

02:42:53 9 A. No.

02:42:54 10 Q. You've never prepared testimony for any  
02:42:57 11 other Legislature, have you?

02:42:58 12 A. No.

02:42:59 13 Q. Never worked with another PR team in any  
02:43:03 14 other state, have you?

02:43:04 15 A. No.

02:43:05 16 Q. You have no experience with any risk pool  
02:43:12 17 other than the Local Government Center's risk pools,  
02:43:15 18 correct?

02:43:15 19 A. Correct.

02:43:16 20 Q. You have never made a study prior to your  
02:43:22 21 expert opinion in this case about the capital assets  
02:43:27 22 or reserving practices of other risk pools, have you?

02:43:33 23 A. That's correct.

02:43:34 1 Q. Prior to this case, you had no knowledge of  
02:43:39 2 an association called AGRiP, correct?

02:43:44 3 A. I did have knowledge of them, but I didn't  
02:43:46 4 have knowledge of specific practices of the  
02:43:48 5 organization.

02:43:49 6 Q. I'll accept that. Similarly, you had  
02:43:52 7 knowledge of the existence of the National League of  
02:43:56 8 Cities with respect to insurances and risk pooling,  
02:43:58 9 but didn't know any specifics?

02:44:00 10 A. Other than to see periodic surveys on  
02:44:06 11 tallies of risk pools around the country.

02:44:11 12 Q. Prior to helping the board understand RBCs,  
02:44:19 13 you had no knowledge of a single risk pool that used  
02:44:24 14 risk-based capital for the determination of its  
02:44:27 15 capital requirements, correct?

02:44:29 16 A. Prior to what?

02:44:31 17 Q. Prior to -- let's use '02.

02:44:34 18 A. No, I didn't.

02:44:35 19 Q. There is -- there is in this case the use  
02:45:07 20 of .5 RBC for certain administrative expenses by the  
02:45:13 21 Local Government Center. Are you aware of that?

02:45:15 22 A. I am.

02:45:15 23 Q. You have no idea where this .5 RBC came from,

02:45:20 1 do you?

02:45:21 2 A. I do.

02:45:21 3 Q. I'm sorry?

02:45:22 4 A. I do.

02:45:23 5 Q. Yes? Where did it come from?

02:45:26 6 A. As I recall -- and I haven't seen documents  
02:45:28 7 to pull this from -- but as I reflected on the  
02:45:32 8 proceedings in the various preparation that I've  
02:45:35 9 made, I think this relates to a retreat. Maybe it  
02:45:39 10 was the 2008 retreat where I had presented an update  
02:45:41 11 on risk-based capital.

02:45:44 12 As I recall, I came into that retreat  
02:45:47 13 with a sense that -- again, based on looking at, as I  
02:45:53 14 periodically do -- at comparisons of RBC levels, for  
02:45:57 15 example, of other New England insurers. I came into  
02:46:00 16 that retreat for the purpose of suggesting to the  
02:46:04 17 board that they revisit the level and consider  
02:46:07 18 raising the RBC target from 4.2 to 5.0.

02:46:12 19 And in the ensuing discussions within  
02:46:15 20 the day or days of the retreat, that didn't happen.  
02:46:19 21 And what I interpret did happen is as follows. The  
02:46:23 22 fundamental core capital target stayed at 4.2. And  
02:46:29 23 the .5 RBC layer came in -- and I knew that as coming

02:46:35 1 in through -- in the context of the large capital  
02:46:41 2 systems project, a major system rewrite that at  
02:46:46 3 inception -- and it probably goes back several years  
02:46:48 4 before this period I'm talking about -- was something  
02:46:51 5 like an \$8 million project. And it may have been  
02:46:57 6 recorded in the financials as a set aside for that  
02:47:02 7 project.

02:47:03 8           So my recollection where this .5 came  
02:47:06 9 from was that, Well, we're not going to increase the  
02:47:08 10 capital from 4.2 to 5, but we have a residual balance  
02:47:14 11 in the original systems account, expected originally  
02:47:20 12 to be an expenditure of \$8 million. It's maybe down  
02:47:23 13 to some much smaller number now, maybe \$500,000.  
02:47:23 14 I don't remember the number.

02:47:28 15           So I viewed this as something where  
02:47:30 16 they packaged it and said we've got the 4.2 underlying  
02:47:33 17 layer. And then we've got the residual budget for  
02:47:37 18 the capital systems project. We will put that in a  
02:47:41 19 .5 layer.

02:47:43 20           And so the .5 layer, although it  
02:47:45 21 might have been expressed as a target, I think the  
02:47:50 22 sense was that there would be a -- there was some  
02:47:52 23 sort of a vote that limited, despite the layer here

02:47:58 1 being .5 RBC and whatever number of dollars that  
02:48:02 2 was -- it would have been several million -- but that  
02:48:04 3 the approved spending of dollars within that target  
02:48:06 4 was only this much smaller number like \$500,000 or  
02:48:11 5 \$1 million.

02:48:12 6 That's my best recollection of how  
02:48:14 7 that arose.

02:48:19 8 Q. Thank you. Who came up with the idea of  
02:48:20 9 using the .5 RBC as the means of calculating  
02:48:23 10 administrative reserve?

02:48:23 11 A. I just don't recall.

02:48:24 12 Q. You didn't?

02:48:25 13 A. No.

02:48:25 14 Q. As a matter of fact, you've never seen this  
02:48:29 15 concept of using RBC to calculate an administrative  
02:48:33 16 reserve expense amount, have you?

02:48:36 17 A. No. If I could explain --

02:48:41 18 Q. Sure.

02:48:42 19 A. -- my view of it.

02:48:43 20 Q. Yes. Go ahead.

02:48:44 21 A. Extraordinary administrative expense would  
02:48:48 22 be a perfectly appropriate use of capital. And so  
02:48:56 23 whether -- the view in this case is the fact, whereas

02:49:02 1 such an expense might be funded out of a generalized  
02:49:07 2 capital budget or a target capital -- that in this  
02:49:10 3 instance what they did was they circumscribed the  
02:49:13 4 potential use of capital for administrative purposes  
02:49:16 5 and limited it in the way that's shown here.

02:49:23 6 Q. I think you told me at deposition that this  
02:49:26 7 .5 RBC was not an actuarial use of risk-based capital.

02:49:33 8 Is that a fair statement?

02:49:34 9 A. It is, but again, if I could explain. It's  
02:49:36 10 not actuarial in the sense that it doesn't compute  
02:49:42 11 from a risk probability kind of a model. That as  
02:49:46 12 I've said, both the NAIC model and general capital --  
02:49:52 13 risk capital considerations make it perfectly  
02:49:55 14 appropriate for there to be capital for such uses,  
02:49:58 15 even though the purpose wouldn't be considered an  
02:50:01 16 actuarial purpose. That's what I meant with that  
02:50:03 17 response.

02:50:03 18 Q. Thank you. So let's stay on RBC for a  
02:50:11 19 moment. This particular amount of RBC, 4.2, did you  
02:50:38 20 tell me at deposition that you don't know how the 4.2  
02:50:43 21 was chosen?

02:50:46 22 A. No, I don't. I speculate that it was kind  
02:50:49 23 of a natural jumping point, given that it was

02:50:55 1 recognized as being equivalent to their long-standing  
02:50:58 2 older target.

02:50:58 3 Q. You didn't recommend 4.2 as this figure to  
02:51:01 4 use?

02:51:01 5 A. No. What I did was in a letter in November,  
02:51:05 6 I said -- We talked about RBC at the retreat. My  
02:51:09 7 recollection is there seemed to be some attraction to  
02:51:13 8 the board to the linkage I had pointed out between  
02:51:17 9 4.2 and their traditional target. And I believe I  
02:51:19 10 told Wendy Parker in November, If we're going to do  
02:51:23 11 this for this year, we should proceed. Let's get the  
02:51:26 12 NAIC software, figure out what actual RBC computations  
02:51:35 13 show and for now, provisionally, let's say we're  
02:51:37 14 using 4.2.

02:51:38 15 Q. And this was in the summer of '02, correct?

02:51:43 16 A. It would have been -- the initial  
02:51:47 17 presentation on the concept and the recognition of the  
02:51:51 18 correlation between 4.2 and their older long-standing  
02:51:54 19 target, that occurred in July.

02:51:56 20 Q. Of '02?

02:51:57 21 A. Of '02.

02:51:58 22 Q. Thank you.

02:51:59 23 A. And then the letter to Wendy was in

02:52:00 1 November of '02.

02:52:01 2 Q. And in July of '02, the actual net assets  
02:52:05 3 on hand at the HealthTrust were half of the 20  
02:52:11 4 percent corridor; were they not?

02:52:15 5 A. That's right. They were.

02:52:16 6 Q. And you said in the past they had been at  
02:52:18 7 20 percent on hand?

02:52:20 8 A. Yes.

02:52:20 9 Q. In '01, were they at 20 percent?

02:52:26 10 A. They hadn't been at 20 percent for several  
02:52:27 11 years.

02:52:28 12 Q. How many is several, Mr. Riemer?

02:52:29 13 A. I would have to see documents to be  
02:52:32 14 certain, but probably from '96 or '97 through 2002.

02:52:39 15 Q. So going back at least to '96-97, they had  
02:52:44 16 been holding on hand about half their corridor?

02:52:48 17 A. No. They were at various levels intermediate  
02:52:51 18 between the target and the 10 that you mentioned.

02:52:59 19 Q. You would agree that if 20 percent equals  
02:53:03 20 4.2 RBC, half -- 10 percent -- equals about 2.1?

02:53:08 21 A. Yes.

02:53:08 22 Q. And you actually calculated that they were  
02:53:12 23 at 2.1 in '02 when this process of enhancing -- I'm

02:53:17 1 sorry -- of changing over to RBC started?

02:53:20 2 A. Yes.

02:53:24 3 Q. The RBC calculations that are done at times  
02:53:32 4 after RBC was adopted by the board, those aren't done  
02:53:35 5 by you, are they?

02:53:36 6 A. No.

02:53:37 7 Q. They're done by Ms. Keeffe?

02:53:39 8 A. They are.

02:53:40 9 Q. And as a matter of fact, this 4.2, I think  
02:53:47 10 you've described this as "nothing particularly  
02:53:54 11 special. It's just a way to back into a stated board  
02:53:58 12 goal"; fair statement?

02:54:00 13 A. Can you give me some context for that,  
02:54:03 14 please. When --

02:54:04 15 Q. Sure.

02:54:05 16 A. -- where?

02:54:06 17 Q. Sure. Here's your deposition. I'll give  
02:54:15 18 you a page reference. Hang on one sec.

02:54:21 19 A. Um-hum.

02:54:23 20 Q. Turn to page 106 for me. Since this is a  
02:54:37 21 condensed transcript, there are four --

02:54:42 22 A. Yes.

02:54:43 23 Q. -- on one page.

02:54:45 1 A. Yes.

02:54:45 2 Q. 106 is lower left. And why don't you just  
02:54:47 3 read for your own edification 105, 106, 107 so you  
02:54:53 4 can tell the context we're in here. And if you want  
02:54:59 5 to read more . . .

02:55:00 6 A. I'm sorry. You want me to read from what  
02:55:03 7 to what?

02:55:03 8 Q. Just for your own benefit, to yourself,  
02:55:05 9 look at 105. The questions I'm going to ask you  
02:55:11 10 about are on 106. And if you want to read into 107,  
02:55:15 11 for your own benefit, do that --

02:55:15 12 A. Sure.

02:55:16 13 Q. -- and just look up when you're done.

02:55:52 14 A. Okay.

02:55:53 15 Q. Okay? So you follow along with me. Page  
02:55:56 16 106, line 9, I asked you, "So you said that the  
02:55:59 17 enterprise or the board doesn't fundamentally use RBC  
02:56:04 18 to set target capital?"

02:56:08 19 You answered, "That's correct."

02:56:09 20 I then asked you, "They choose the  
02:56:11 21 amount of target capital they think appropriate and  
02:56:16 22 the RBC is kind of a back-in way to get to that  
02:56:20 23 amount?"

02:56:21 1                   Your answer, "That's correct."

02:56:23 2           A.     Yes.

02:56:24 3           Q.     And then I asked one more question, "So  
02:56:28 4 there's -- whether we choose 4.2 or we choose 4.8 or  
02:56:32 5 6.8, there's really nothing special about that  
02:56:35 6 number. It just backs into a goal for the amount of  
02:56:38 7 net assets this enterprise decides it wants to hold?"

02:56:44 8                   Answer, "That's correct."

02:56:48 9                   Did I read that correctly?

02:56:49 10          A.     Yes.

02:56:52 11          Q.     Thank you.

02:56:53 12          A.     If I could expand on that, please.

02:56:55 13               MR. VOLINSKY: Your Honor, there's not a  
02:56:56 14 question pending.

02:56:57 15               THE PRESIDING OFFICER: Wait for the --  
02:56:58 16 Well, no, I'm going to let him expand, given the  
02:57:00 17 time --

02:57:02 18               MR. VOLINSKY: Okay. Given?

02:57:03 19               THE PRESIDING OFFICER: -- given the time  
02:57:04 20 that I have right here.

02:57:05 21               MR. VOLINSKY: I couldn't hear you.

02:57:06 22               THE PRESIDING OFFICER: No, that's fine.

02:57:07 23                   You go right ahead, Mr. Riemer,

02:57:11 1 expand.

02:57:11 2 THE WITNESS: The expansion I wanted to  
02:57:13 3 offer is that at inception, the 4.2 was certainly a  
02:57:17 4 number that was driven by the old target. So the old  
02:57:21 5 target used the 4.2. It wasn't that the old target --  
02:57:26 6 20 percent, that is -- produced a 4.2 ratio, it wasn't  
02:57:29 7 that in isolation compared to anything else anyone  
02:57:32 8 identified 4.2 as a magic number.

02:57:35 9 But then in subsequent years -- I  
02:57:36 10 mean, it's really a semantics issue. Is the capital  
02:57:41 11 target driven by some sort of RBC period? No, it's  
02:57:42 12 really not. RBC is simply a yardstick that's  
02:57:45 13 convenient to use to think about the universe of  
02:57:48 14 other groups, particularly the comparison group of  
02:57:51 15 New England insurers.

02:57:53 16 So I -- I would advise the board --  
02:57:56 17 and I think of it myself -- as guidance in this  
02:58:00 18 issue, it's more important to understand what other  
02:58:03 19 insurers are doing. And then say, Well, that happens  
02:58:06 20 to be an RBC at this level. That's kind of my  
02:58:09 21 thinking on the issue.

02:58:09 22 THE PRESIDING OFFICER: I'm sorry. I didn't  
02:58:09 23 hear the last phrase.

02:58:09 1 THE WITNESS: I said, that's my thinking on  
02:58:09 2 the issue.

02:58:16 3 THE PRESIDING OFFICER: I'm going to  
02:58:17 4 interject, just for clarification, would I be too far  
02:58:20 5 off the mark if I said that it's an index?

02:58:24 6 THE WITNESS: Yes. That's exactly what it  
02:58:26 7 is. Yes.

02:58:26 8 THE PRESIDING OFFICER: Thank you.

02:58:27 9 Please proceed, Mr. Volinsky.

02:58:28 10 MR. VOLINSKY: Thank you.

02:58:29 11 Q. BY MR. VOLINSKY: The term "member balance"  
02:58:43 12 is synonymous with "net assets"; is it not?

02:58:49 13 A. Um --

02:58:50 14 Q. As you understand it in the context of this  
02:58:51 15 case?

02:58:52 16 A. Yes.

02:58:52 17 Q. And "member balance" and "net assets" are  
02:58:57 18 also, in the context of this case, synonymous with  
02:59:01 19 the term "capital"?

02:59:03 20 A. Yes.

02:59:04 21 Q. And in the context of the Local Government  
02:59:08 22 Center, net assets legally belong to the members of  
02:59:13 23 the Local Government Center?

02:59:16 1 A. Yes.

02:59:16 2 Q. And those members are towns and cities and  
02:59:18 3 school districts?

02:59:19 4 A. Yes.

02:59:20 5 THE PRESIDING OFFICER: Don't forget the  
02:59:22 6 counties.

02:59:23 7 MR. VOLINSKY: And the counties. Sorry.

02:59:24 8 Q. BY MR. VOLINSKY: The counties?

02:59:26 9 A. And the counties, yes.

02:59:28 10 Q. You gave us the benefit of your thoughts on  
02:59:46 11 Blue Cross plans and their capital reserving, right?

02:59:51 12 A. Yes.

02:59:51 13 Q. At the time that there were ongoing  
02:59:55 14 discussions of what level RBC to choose, there was a  
03:00:01 15 consultant other than yourself involved, named  
03:00:04 16 Michael Bailit?

03:00:05 17 A. Yes.

03:00:06 18 Q. Am I saying his name right?

03:00:08 19 A. You are.

03:00:08 20 Q. And he's a healthcare consultant?

03:00:11 21 A. Yes.

03:00:11 22 Q. And Mr. Bailit advised you and the board  
03:00:15 23 that Blue Cross has different reasons for maintaining

03:00:19 1 capital than does a Local Government Center risk pool;  
03:00:23 2 did he not?

03:00:24 3 A. I don't recall that.

03:00:25 4 Q. Let me take you to Exhibit 66. It should  
03:00:32 5 be Book 4, I think. Book 3, I'm sorry. 66 at 203.  
03:01:20 6 Just so I don't have to go look for my own, we'll  
03:01:23 7 share. Let me send everyone to 198 first, which is  
03:01:27 8 the cover sheet for what this is. This is the July  
03:01:29 9 '02 retreat, correct?

03:01:32 10 A. Yes.

03:01:32 11 Q. And then if you skip forward to 03 --  
03:01:42 12 Actually, let me just skip you forward to 01. You'll  
03:01:50 13 see there's a member balance policy discussion  
03:01:52 14 reflected in the minutes. That starts on 01,  
03:01:55 15 correct?

03:01:56 16 A. Yes.

03:01:56 17 Q. And there's a point where you're quoted as  
03:02:00 18 providing a certain explanation, correct?

03:02:03 19 A. Correct.

03:02:04 20 Q. And then your explanation and the  
03:02:07 21 discussion continues on 02?

03:02:09 22 A. Yes.

03:02:09 23 Q. Then when you get to the top of 03,

03:02:17 1 Dr. Weiss makes a comment --

03:02:19 2 He was the board chair then. Do you  
03:02:21 3 remember that?

03:02:21 4 A. Yes, I do.

03:02:22 5 Q. -- "This needs to be looked at from two  
03:02:25 6 perspectives. What we need to internalize and what  
03:02:27 7 our customers need to internalize"?

03:02:29 8 A. Yes.

03:02:30 9 Q. And then the very next sentence is what I'm  
03:02:33 10 bringing us to. "Michael Bailit noted that Anthem  
03:02:38 11 has different reasons for building up their reserves"?

03:02:41 12 A. Yes.

03:02:41 13 Q. And Anthem happened to be the name of the  
03:02:43 14 Blue Cross carrier for New Hampshire?

03:02:45 15 A. That's right.

03:02:46 16 Q. Thank you. When you looked at the  
03:03:02 17 insurance carriers in the Massachusetts study --

03:03:05 18 A. Yes.

03:03:05 19 Q. -- and when you read that study, did you  
03:03:11 20 then go on to determine whether those insurance  
03:03:16 21 carriers in Massachusetts have a requirement to  
03:03:20 22 return earnings and surplus excess of operations the  
03:03:24 23 way LGC does?

03:03:26 1 A. No, I didn't. And if I could expand, it  
03:03:29 2 seems to me that was the purpose of the study, was to  
03:03:33 3 deal with possible requirements for such a return.

03:03:39 4 Q. But those enterprises in Massachusetts did  
03:03:42 5 not have the requirement at the time that was under  
03:03:47 6 study?

03:03:48 7 A. I don't know one way or the other.

03:03:52 8 Q. And if they built up their reserves or  
03:03:54 9 their net assets not having a requirement, you  
03:03:55 10 wouldn't know whether that was the case or not?

03:03:58 11 A. That's correct.

03:03:58 12 Q. But you do know LGC has that requirement?

03:04:00 13 A. I do.

03:04:00 14 Q. And they've had that requirement for the  
03:04:02 15 entire time that you've been in place as the consulting  
03:04:06 16 actuary?

03:04:06 17 A. Yes.

03:04:06 18 Q. Are you familiar with the term "short tail  
03:04:11 19 line"?

03:04:12 20 A. I am.

03:04:12 21 Q. Is health insurance a short tail line?

03:04:15 22 A. It is.

03:04:16 23 Q. In working with a short tail line, do you

03:04:18 1 find that you have a higher level of confidence  
03:04:21 2 predicting claims than you would with a long tail  
03:04:27 3 line of insurance?

03:04:28 4 A. Generally, yes.

03:04:29 5 Q. Thank you. Are you familiar with the term  
03:04:46 6 "reinsurance"?

03:04:47 7 A. I am.

03:04:47 8 Q. The Local Government Center does not  
03:04:53 9 currently purchase reinsurance externally for its  
03:05:01 10 health lines -- medical health line, correct?

03:05:03 11 A. Correct.

03:05:03 12 Q. It had in the past?

03:05:05 13 A. Yes.

03:05:06 14 Q. And when it purchased reinsurance  
03:05:09 15 externally in the past, that would be included in  
03:05:13 16 your rate calculations as one of the factors that  
03:05:16 17 went into compiling the premium?

03:05:19 18 A. Yes.

03:05:19 19 Q. And now HealthTrust, for medical, uses an  
03:05:27 20 intercompany pooling agreement, right?

03:05:30 21 A. Well, if I can speculate on the practice  
03:05:37 22 that they call it and say it's a pooling -- internal  
03:05:41 23 pooling arrangement. Intercompany, I think is --

03:05:46 1 Q. Intercompany pooling arrangement. Well,  
03:05:49 2 let me get you something and I'll show you exactly  
03:05:51 3 what I'm talking about. Why don't I send you to  
03:05:56 4 Exhibit 63, which should be Book 2. If you can get  
03:06:13 5 it open for us.

03:06:14 6 A. Okay.

03:06:27 7 Q. And when we're at 63, I want to turn us to  
03:06:33 8 page 32. You'll see in the middle bottom, each page  
03:06:38 9 has a number.

03:06:38 10 A. Yes.

03:06:39 11 Q. Use those numbers and go to 32.

03:06:43 12 A. Yes.

03:06:44 13 Q. Page 32 is your rating analysis for the  
03:06:57 14 January '12 medical pool?

03:07:01 15 A. Yes.

03:07:01 16 Q. And we talked before how you use  
03:07:04 17 approximately a dozen factors that go into the rating  
03:07:06 18 formula?

03:07:07 19 A. Yes.

03:07:10 20 Q. And on this page, are there displayed the  
03:07:12 21 factors you used for this particular cycle of rates?

03:07:16 22 A. Yes.

03:07:16 23 Q. If you turn to Factor No. 6, you'll see

03:07:22 1 something called a claims pooling fee at 4.2 percent  
03:07:25 2 of incurred claims?

03:07:26 3 A. Yes.

03:07:26 4 Q. Do you see where I am?

03:07:28 5 A. I do.

03:07:29 6 Q. That pooling fee is contributed by the  
03:07:35 7 internal pools in the health program to deal with  
03:07:38 8 claims that come in above a certain set target,  
03:07:42 9 correct?

03:07:43 10 A. Yes.

03:07:43 11 Q. And so that used to be a matter against  
03:07:51 12 which LGC reinsured?

03:07:55 13 A. In part. In the particular example that  
03:07:58 14 you presented, the pooling is done with respect to  
03:08:01 15 individual claims in excess of \$150,000. And in the  
03:08:05 16 days prior to this when there was commercially  
03:08:10 17 purchased reinsurance --

03:08:12 18 Q. Yes.

03:08:12 19 A. -- that was purchased -- Well, when it was  
03:08:15 20 most recently part of the program, it was purchased  
03:08:18 21 with a \$1 million threshold as opposed to the 150.  
03:08:22 22 So there was kind of a two-layer internal and  
03:08:25 23 external reinsurance mechanism in the rates.

03:08:28 1 Q. Turn -- Keep one finger here and look at --  
03:08:32 2 take the No. 6 factor in mind --

03:08:38 3 A. Yes.

03:08:38 4 Q. -- and turn to page 37. And you should get  
03:08:48 5 to the rating analysis sheet for the immediately  
03:08:51 6 preceding year. Is that what that is?

03:08:54 7 A. Yes.

03:08:55 8 Q. And if you look at Factor No. 6, that's  
03:09:00 9 stop loss, 4 percent of incurred claims?

03:09:06 10 A. Yes.

03:09:06 11 Q. And "stop loss" is another name for  
03:09:09 12 reinsurance --

03:09:10 13 A. That's right.

03:09:10 14 Q. -- external reinsurance?

03:09:12 15 A. Yes.

03:09:12 16 Q. And so in 2011, stop loss was at 4 percent  
03:09:17 17 of incurred claims?

03:09:18 18 A. Right.

03:09:18 19 Q. And at 2012, claims pooling was at  
03:09:22 20 4.2 percent of incurred claims --

03:09:24 21 A. Yes.

03:09:25 22 Q. -- correct?

03:09:26 23 A. That's correct.

03:09:27 1 Q. And both of them, given the relative size  
03:09:31 2 of the premiums, were about -- one was 2.9 million  
03:09:37 3 and then '11 was at 2.6 million, thereabouts?

03:09:41 4 A. Yes.

03:09:41 5 Q. Thank you. You mentioned that part of the  
03:09:52 6 risk-based capital formula involves trying to plan  
03:09:56 7 for risks that may befall an insurance carrier as a  
03:10:05 8 result of changes in the law, right?

03:10:08 9 A. Yes.

03:10:08 10 Q. Like healthcare reform?

03:10:11 11 A. Exactly.

03:10:12 12 Q. And at times when you thought it relevant  
03:10:18 13 to do so, you recommended that the Local Government  
03:10:21 14 Center actually build in a factor that increased the  
03:10:25 15 rates to accommodate potential healthcare reform,  
03:10:30 16 correct?

03:10:30 17 A. Correct except for the word "potential."  
03:10:36 18 We were --

03:10:37 19 Q. Go ahead.

03:10:37 20 A. -- acting with respect to estimates that  
03:10:40 21 were developed for the law as enacted.

03:10:43 22 Q. Fair enough. But you built that into the  
03:10:46 23 rates?

03:10:46 1 A. Yes.

03:10:46 2 Q. So that was a risk that you were aware of,  
03:10:52 3 someone did a calculation of what the likely costs  
03:10:56 4 might be, and then you built it into increasing the  
03:10:59 5 rates to account for those changes?

03:11:01 6 A. Yes.

03:11:01 7 Q. You have also calculated the IBNR reserve  
03:11:33 8 for the Local Government Center; is that right?

03:11:34 9 A. Yes.

03:11:35 10 Q. "IBNR" stands for "incurred but not" --  
03:11:42 11 What's the last --

03:11:43 12 A. "Reported."

03:11:44 13 Q. "Reported." And your practice with respect  
03:11:52 14 to IBNR is to calculate it and then add a 10 percent  
03:11:54 15 margin, right?

03:11:54 16 A. That's correct.

03:11:55 17 Q. And you'll agree with me that reasonable  
03:11:58 18 actuaries could add margins from zero to maybe  
03:12:01 19 15 percent?

03:12:01 20 A. Yes.

03:12:01 21 Q. But adding of that margin is like creating  
03:12:07 22 a second reserve for IBNR?

03:12:09 23 A. At times.

03:12:13 1 Q. Health reform is one kind of risk included  
03:12:48 2 in the RBC calculations. Asset risk is another kind?

03:12:54 3 A. Yes.

03:12:54 4 Q. And asset risk is the volatility of the  
03:12:59 5 investment portfolio of, in this case, the Local  
03:13:03 6 Government Center?

03:13:03 7 A. Yes.

03:13:03 8 Q. And by buying less volatile investments,  
03:13:09 9 the Local Government Center can reduce its asset  
03:13:14 10 risk --

03:13:15 11 A. Yes.

03:13:15 12 Q. -- can it not?

03:13:16 13 A. Yes.

03:13:17 14 Q. Another risk that's part of RBC is business  
03:13:22 15 risk, correct?

03:13:23 16 A. Yes.

03:13:24 17 Q. And business risk for a private insurer is  
03:13:29 18 generally related to the idea that some of the  
03:13:34 19 companies that the insurer writes policies for fail,  
03:13:41 20 don't make payments, whatever reason, right?

03:13:44 21 A. Yes.

03:13:44 22 Q. All of the Local Government Center's  
03:13:51 23 members are municipal entities, aren't they?

03:13:54 1 A. Yes.

03:13:55 2 Q. Are you aware of any municipal entity in  
03:13:57 3 New Hampshire having failed since 1988 when you  
03:14:01 4 started working for the Local Government Center?

03:14:02 5 A. No.

03:14:23 6 MR. VOLINSKY: If I can have just one  
03:14:24 7 moment.

03:14:25 8 THE PRESIDING OFFICER: Absolutely.

03:15:14 9 Q. BY MR. VOLINSKY: So we've talked,  
03:15:15 10 Mr. Riemer, about 20 percent equates to 4.2;  
03:15:19 11 10 percent equates to about 2.1 --

03:15:21 12 A. Yes.

03:15:21 13 Q. -- right?

03:15:22 14 You testified before the New  
03:15:27 15 Hampshire Legislature in April of 2010 about a bill  
03:15:31 16 that would have reduced the reserves to be held by  
03:15:35 17 the Local Government Center to 10 percent, correct?

03:15:39 18 A. Yes.

03:15:39 19 Q. Let me give you Exhibit 60, which is in  
03:15:46 20 Book 2. I'll get that for you.

03:15:49 21 A. Thank you.

03:16:11 22 Q. And let me say, I understand you don't  
03:16:13 23 agree with 10 percent or 2.1. And you've testified

03:16:16 1 to that; have you not?

03:16:18 2 A. I have.

03:16:18 3 Q. Let me ask you to turn to page 25 of  
03:16:22 4 Exhibit 60. And you'll see the numbers are up in the  
03:16:28 5 top right corner.

03:16:35 6 A. Yes.

03:16:35 7 Q. There's a comment by a representative named  
03:16:38 8 Mr. Eaton, and then there's a quote by you. Did you  
03:16:41 9 not tell the Legislature, "Keep in mind that despite  
03:16:47 10 the objections I see to the 10 percent limit, I'm not  
03:16:53 11 saying having a 10 percent limit would be a grave  
03:16:56 12 situation. I would say it would be adverse for our  
03:16:58 13 members."

03:17:00 14 Did you say that?

03:17:01 15 A. I see that, yes.

03:17:19 16 MR. VOLINSKY: That's all I have.

03:17:20 17 THE PRESIDING OFFICER: Thank you,  
03:17:20 18 Mr. Volinsky.

03:17:24 19 Mr. Saturley?

03:17:26 20 MR. SATURLEY: Yes. Thank you, Mr. Mitchell.

03:17:27 21 MR. VOLINSKY: I'll just clear my stuff out  
03:17:29 22 of your way. Go ahead.

03:17:37 23 MR. SATURLEY: Thank you.

## REDIRECT EXAMINATION

03:17:38 1

03:17:40 2

BY MR. SATURLEY:

03:17:41 3

Q. Mr. Riemer, do you still have that page in front of you?

03:17:43 4

03:17:43 5

A. The page from the legislative hearing?

03:17:46 6

Q. Yes.

03:17:46 7

A. Yes, I do.

03:17:47 8

Q. Would you read that whole paragraph.

03:18:09 9

A. Yes. I finished reading that paragraph.

03:18:12 10

Q. Would you go on to read the rest of -- I'm going to have you read the rest of your testimony, that particular section of testimony. I'd like to put in context the question and response that were elicited from you on cross.

03:18:15 11

03:18:18 12

03:18:19 13

03:18:23 14

03:18:26 15

A. Yes.

03:18:56 16

Q. Now, having read your whole response to the question from Representative Eaton, could you put in context the idea of how you really felt about a 10 percent limit.

03:19:03 17

03:19:06 18

03:19:08 19

03:19:10 20

A. Yes. As I read the remainder of the response, it's clear that the first assertion about a 10 percent limit not being a grave situation, the word "grave" there meant "grave" in its full meaning,

03:19:12 21

03:19:14 22

03:19:18 23

03:19:24 1 such as imminent collapse.

03:19:26 2 Q. It means like "grave" with a tombstone over  
03:19:29 3 here?

03:19:30 4 A. Yes. Yes.

03:19:30 5 Q. And so what you were really trying to  
03:19:33 6 communicate to Representative Eaton is that at a  
03:19:35 7 10 percent level, indeed you actually would be quite  
03:19:39 8 concerned?

03:19:39 9 A. That's right. The message was you wouldn't  
03:19:41 10 be in danger of imminent collapse, but you'd better  
03:19:44 11 get moving and you'd better get that capital up.

03:19:44 12 Q. Because 10 percent would not be a  
03:19:45 13 satisfactory level --

03:19:46 14 A. That's right.

03:19:46 15 Q. -- for HealthTrust?

03:19:47 16 A. That's right.

03:19:48 17 Q. Given all the challenges that it faced and  
03:19:49 18 the history that it had already?

03:19:51 19 A. Yes. Yes.

03:20:00 20 Q. Mr. Volinsky used the word in one of his  
03:20:03 21 questions that I didn't quite understand -- and I'm  
03:20:05 22 not sure you understood it. This was with regards to  
03:20:08 23 the pooling arrangement and the pooling charge -- he

03:20:12 1 used the word "intercompany" --

03:20:14 2 A. Yes.

03:20:15 3 Q. -- "pooling arrangement."

03:20:18 4 Did you know what he meant by that?

03:20:18 5 A. Well, at first I didn't. But then when he  
03:20:19 6 showed me the exhibit, I knew he meant the pooling  
03:20:21 7 fee that's in the rate structure.

03:20:22 8 Q. The pooling fee that's in the rate structure?

03:20:24 9 A. Yes.

03:20:24 10 Q. Where is that pooling -- Who does that  
03:20:27 11 pertain to? Does it somehow pertain to some  
03:20:31 12 intercompany?

03:20:31 13 A. Not intercompany. Maybe inter-member.

03:20:34 14 Q. Inter-member?

03:20:35 15 A. Yes.

03:20:36 16 Q. What does that mean? Does that mean Bow  
03:20:37 17 and Hooksett and Portsmouth? Is that what that  
03:20:40 18 pooling arrangement pertains to?

03:20:40 19 A. It does.

03:20:41 20 Q. It has nothing to do with intercompany  
03:20:43 21 amongst HealthTrust?

03:20:44 22 A. Correct.

03:20:44 23 Q. And could you explain a little bit more

03:20:47 1 about why HealthTrust might have decided between  
03:20:49 2 January of 2011 and January 2012, why in the one year  
03:20:55 3 there might have been some allocation of payment for  
03:20:59 4 stop loss insurance and they might have changed their  
03:21:02 5 mind the following year. Could you expand on that a  
03:21:04 6 little bit. And I guess that has to do with this  
03:21:08 7 pooling arrangement?

03:21:08 8 A. Yes. It's not really a change in policy.  
03:21:11 9 What drives it from year to year is the actual result  
03:21:14 10 with respect to large claims. And the entire mechanism  
03:21:18 11 exists as a way to soften the blow, given that most  
03:21:22 12 of the members are small groups of employees -- to  
03:21:25 13 soften the blow of a small community, or even a  
03:21:29 14 medium-sized community. There are no communities in  
03:21:34 15 New Hampshire in this pool that are that large. But  
03:21:36 16 to soften the blow in those communities of having  
03:21:38 17 significant excess claims.

03:21:39 18 Q. Now, let's make a real example.

03:21:41 19 A. Okay. A real example is you have a town  
03:21:44 20 with 150 members who participate in HealthTrust. And  
03:21:49 21 they experience an unfortunate catastrophic loss in  
03:21:55 22 their population. There might be premature twins or  
03:21:57 23 a severe head injury or transplant, a \$1 million

03:22:00 1 claim or two \$500,000 claims that hit this small  
03:22:04 2 organization.

03:22:05 3                   What we do through the pooling  
03:22:06 4 mechanism is assure that that kind of experience  
03:22:09 5 doesn't directly come through into the rates of that  
03:22:13 6 community. So what we do is when we do the rating,  
03:22:17 7 we go community by community, member by member, and  
03:22:20 8 we remove from their claims experience the claims in  
03:22:24 9 excess -- and in these two years it's different --  
03:22:28 10 but it's either 100 or \$150,000.

03:22:30 11                   So if the small community is hit with  
03:22:32 12 a transplant cost of \$1 million, we include \$150,000  
03:22:36 13 of that experience in their premium calculation.  
03:22:40 14 We take out the 850,000 so-called excess. We set it  
03:22:47 15 aside. And we do that for all the communities.

03:22:50 16           Q.     Every member of the pool --

03:22:51 17           A.     Every member of the pool.

03:22:52 18           Q.     -- has this same protection above the  
03:22:55 19 \$150,000?

03:22:55 20           A.     That's right.

03:22:56 21           Q.     And it's set aside?

03:22:57 22           A.     That's right. Set aside.

03:22:58 23           Q.     Go on.

03:22:59 1           A.     And at the end of the rating process, we  
03:23:00 2 look at all the set-asides. We have to cover that  
03:23:04 3 cost. Large claims will occur every year. But they'll  
03:23:07 4 impact different communities in some years and not  
03:23:09 5 others.

03:23:09 6                         So this entire pooling mechanism is a  
03:23:13 7 way to take all those set-asides so that we don't  
03:23:16 8 impose them individually on the small groups that  
03:23:19 9 experience them. And then we compute the total value  
03:23:23 10 of the set-asides as a percent of the whole pie. And  
03:23:27 11 in one of these cases it was 4 percent. So we then  
03:23:30 12 go back in and add that 4 percent cost into the rate.

03:23:34 13           Q.     To the rate. So that everybody -- so that  
03:23:36 14 you've spread the cost of these massive losses?

03:23:39 15           A.     That's correct.

03:23:40 16           Q.     Isn't that kind of the essence of pooling?

03:23:42 17           A.     It is.

03:23:43 18           Q.     Isn't that protection for the members that  
03:23:48 19 might suffer a catastrophic loss?

03:23:50 20           A.     It is.

03:23:51 21           Q.     Isn't the effect of the charge, the pooling  
03:23:55 22 fee charge in any particular year that all the members  
03:23:58 23 participate in is totally a function of whether or

03:24:00 1 not there have been massive losses in the past?

03:24:02 2 A. Yes.

03:24:16 3 MR. SATURLEY: I have no further questions  
03:24:17 4 for Mr. Riemer, Mr. Mitchell.

03:24:19 5 THE PRESIDING OFFICER: Thank you,  
03:24:20 6 Mr. Saturley.

03:24:21 7 Mr. Gordon?

03:24:22 8 MR. GORDON: No.

03:24:22 9 THE PRESIDING OFFICER: Thank you.

03:24:23 10 Mr. Howard?

03:24:24 11 MR. HOWARD: No thank you, Mr. Mitchell.

03:24:26 12 THE PRESIDING OFFICER: Mr. Volinsky?

03:24:28 13 RE-CROSS-EXAMINATION

03:24:29 14 BY MR. VOLINSKY:

03:24:29 15 Q. Just following up on that last point, if I  
03:24:31 16 might, the effect of, in this instance, a 4 percent  
03:24:34 17 charge against the premiums was to take into account  
03:24:37 18 recent massive losses in the preceding plan year;  
03:24:41 19 is that right?

03:24:41 20 A. In the same year for which we do all the  
03:24:44 21 experience to do the rating, yes.

03:24:47 22 Q. So you're able to rebalance the premiums by  
03:24:52 23 adding this 4 percent charge to overcome what you

03:24:55 1 describe as massive losses in a couple of places,  
03:24:59 2 maybe a number of places during the rating period?

03:25:02 3 A. Yes.

03:25:03 4 MR. VOLINSKY: Thank you.

03:25:04 5 THE PRESIDING OFFICER: Okay. Anything  
03:25:05 6 further, Mr. Saturley?

03:25:06 7 MR. SATURLEY: No, sir. Thank you.

03:25:07 8 THE PRESIDING OFFICER: Mr. Gordon?

03:25:09 9 MR. GORDON: No.

03:25:10 10 THE PRESIDING OFFICER: Mr. Howard?

03:25:11 11 MR. HOWARD: Nothing.

03:25:14 12 THE PRESIDING OFFICER: Mr. Riemer, I have  
03:25:16 13 a couple questions I'd like to ask of you.

03:25:19 14 THE WITNESS: Yes.

03:25:20 15 THE PRESIDING OFFICER: The good news for  
03:25:21 16 experts is you're an experienced expert in testimony  
03:25:27 17 in these type of proceedings. As you know, the good  
03:25:30 18 news is you got to watch everyone else. The bad news  
03:25:34 19 is you're kind of my cleanup batter, if you get my  
03:25:37 20 drift.

03:25:38 21 THE WITNESS: Okay. All right.

03:25:43 22 THE PRESIDING OFFICER: That is to say, I  
03:25:44 23 believe you're going to be the last expert on RBC and

03:25:47 1 such --

03:25:47 2 THE WITNESS: Okay.

03:25:47 3 THE PRESIDING OFFICER: -- to present  
03:25:49 4 testimony.

03:25:52 5 I guess the first question that I  
03:25:54 6 have, you had testified about a 6.5 percent -- I have  
03:26:04 7 it as level of adversity, but I might not be able to  
03:26:08 8 read my own writing.

03:26:09 9 Do you remember when you talked --

03:26:10 10 THE WITNESS: Yes.

03:26:11 11 THE PRESIDING OFFICER: -- about that 6.5?

03:26:13 12 THE WITNESS: I do.

03:26:14 13 THE PRESIDING OFFICER: With respect to  
03:26:14 14 that 6.5, that's the insomnia margin for you, that's  
03:26:22 15 the one that doesn't let you sleep? Insomnia?

03:26:24 16 THE WITNESS: That's correct.

03:26:24 17 THE PRESIDING OFFICER: Okay.

03:26:24 18 THE WITNESS: I wouldn't sleep if 6-1/2  
03:26:26 19 percent was something I had to worry about.

03:26:28 20 THE PRESIDING OFFICER: Understood. Now,  
03:26:33 21 prior and subsequent to that reference, the 6.5 --

03:26:38 22 THE WITNESS: Yes.

03:26:39 23 THE PRESIDING OFFICER: -- there was

03:26:40 1 testimony that was elicited from you, both on direct,  
03:26:43 2 I believe, and on cross-examination which spoke to  
03:26:48 3 margins. For instance, there was a little bit of a  
03:26:53 4 margin built in the IBNR.

03:26:57 5 THE WITNESS: Yes.

03:26:57 6 THE PRESIDING OFFICER: Do you remember  
03:26:58 7 that?

03:27:00 8 Is that margin in the 6.5 or is that  
03:27:02 9 on top of the 6.5 insomnia margin?

03:27:06 10 THE WITNESS: Okay. I view it as really  
03:27:08 11 separate because --

03:27:09 12 THE PRESIDING OFFICER: Well, I understand  
03:27:09 13 it's separate. But does it represent a different  
03:27:14 14 amount of capital?

03:27:16 15 THE WITNESS: It does in a sense. The  
03:27:21 16 capital that we're talking about predominantly here,  
03:27:25 17 I could best describe it by drawing a timeline.  
03:27:29 18 Think of us as being at December 31. The IBNR and  
03:27:32 19 any margin that I put in that is with respect to  
03:27:34 20 events that have already occurred.

03:27:36 21 THE PRESIDING OFFICER: Understood.

03:27:37 22 THE WITNESS: And that's separate in this  
03:27:38 23 universe of risk from the rating and the capital --

03:27:43 1 the target capital, my insomnia margin, the  
03:27:47 2 \$625 million of claim exposure that we have when we  
03:27:50 3 issue the GMR --

03:27:53 4 THE PRESIDING OFFICER: Yes.

03:27:53 5 THE WITNESS: -- that's totally prospective.

03:27:55 6 So the two things live in separate universes. And,  
03:27:58 7 in fact, I can report to you incidentally that the  
03:27:59 8 margin in the IBNR that was referenced, when we set  
03:28:03 9 the IBNR at December 31, 2012, put a 10 percent  
03:28:08 10 margin in there, and I've since been advised by  
03:28:11 11 Sandal Keeffe of two \$1 million claims that came in  
03:28:13 12 that were part of that IBNR, and I talked to Anthem.  
03:28:16 13 It appears that the margin is essentially gone.

03:28:18 14 THE PRESIDING OFFICER: Um-hum.

03:28:19 15 THE WITNESS: So it proves that the margin  
03:28:21 16 in that case was appropriate. It turned out not to  
03:28:24 17 be conservative.

03:28:24 18 THE PRESIDING OFFICER: Yes. There were  
03:28:27 19 other margins that you referred to as well?

03:28:29 20 THE WITNESS: Yes.

03:28:30 21 THE PRESIDING OFFICER: Again, could you go  
03:28:31 22 through a similar analysis for me, but first answer  
03:28:35 23 my question.

03:28:36 1 THE WITNESS: Yes.

03:28:36 2 THE PRESIDING OFFICER: Is the -- name the  
03:28:38 3 margin, if you'd be so kind, or remind me of what the  
03:28:42 4 margin was, and tell me if it's in addition to the  
03:28:46 5 6.5. And then, of course, you can explain other  
03:28:49 6 effects it may have.

03:28:50 7 THE WITNESS: Um-hum. Okay. Well, I talked  
03:28:53 8 about the 6.5. I don't think -- that was expressed  
03:28:56 9 not so much as a margin, but to say that if we  
03:28:59 10 experienced a 6.5 percent unexpected increase in cost  
03:29:05 11 over this period of the next couple years, it would  
03:29:09 12 exhaust assets at the level the Bureau is  
03:29:12 13 recommending, so . . .

03:29:14 14 THE PRESIDING OFFICER: And you would be  
03:29:15 15 off your bet, correct?

03:29:16 16 THE WITNESS: That's correct.

03:29:16 17 THE PRESIDING OFFICER: Thank you. Could  
03:29:17 18 you continue with my question.

03:29:19 19 THE WITNESS: The other margin I remember  
03:29:20 20 mentioning is the margin built into the GMR rate,  
03:29:25 21 which we don't do anymore. But it used to be an  
03:29:28 22 integral part of that rating process.

03:29:31 23 And that was -- that came about

03:29:34 1 because when the communities said they would like to  
03:29:36 2 have a fix on the rate well in advance of their  
03:29:40 3 budgeting cycle, we said, We could do that for you.  
03:29:43 4 We prefer to rate when we're closer to the renewal  
03:29:46 5 year, but we were wanting to be responsive to them.  
03:29:50 6 So we said, We can do that for you but the only way  
03:29:53 7 we can do that, recognizing we're making a long-term  
03:29:56 8 bet, is to put a margin in the estimate or in the  
03:29:59 9 guarantee that we give them.

03:30:01 10 THE PRESIDING OFFICER: Thank you. Another  
03:30:02 11 question, please. I have a note from your testimony,  
03:30:11 12 and I want to, if you will, validate it.

03:30:16 13 THE WITNESS: Sure.

03:30:17 14 THE PRESIDING OFFICER: That inputs -- and  
03:30:19 15 that would be inputs of the RBC --

03:30:21 16 THE WITNESS: Yes.

03:30:22 17 THE PRESIDING OFFICER: -- into the RBC,  
03:30:25 18 have nothing to do with the level of assets.

03:30:27 19 Is that a correct statement?

03:30:28 20 THE WITNESS: In a material sense, it is.  
03:30:30 21 If you were to look at all the ingredients from, say,  
03:30:34 22 the HealthTrust financials that go into this RBC  
03:30:37 23 calculation machine, certainly there would be asset

03:30:41 1 values that go in there.

03:30:42 2 THE PRESIDING OFFICER: Yes. Right.

03:30:44 3 THE WITNESS: But they result only  
03:30:46 4 marginally in what the outcome is.

03:30:49 5 THE PRESIDING OFFICER: Thank you. When  
03:30:57 6 you were watching the live streaming of Mr. Atkinson --

03:31:01 7 THE WITNESS: Yes.

03:31:03 8 THE PRESIDING OFFICER: -- and Mr. Coutu --

03:31:05 9 THE WITNESS: Yes.

03:31:10 10 THE PRESIDING OFFICER: -- whomever, do you  
03:31:12 11 remember testimony that addressed the -- I'll call it  
03:31:17 12 the semi-term of art, the law of big, or large  
03:31:21 13 numbers?

03:31:21 14 THE WITNESS: Yes, I do.

03:31:22 15 THE PRESIDING OFFICER: How does the law of  
03:31:24 16 large numbers affect your testimony, if I can find  
03:31:32 17 it -- I'm sorry. When you were talking about the  
03:31:36 18 size of the population --

03:31:38 19 THE WITNESS: Yes.

03:31:39 20 THE PRESIDING OFFICER: -- going up --

03:31:40 21 THE WITNESS: Yes.

03:31:40 22 THE PRESIDING OFFICER: -- the risk -- does  
03:31:47 23 the risk factor go down or up?

03:31:51 1 THE WITNESS: It goes down. And that, in  
03:31:53 2 fact, is reflected in the RBC formulas from the NAIC.

03:31:58 3 THE PRESIDING OFFICER: All right. Thank  
03:31:59 4 you. And I believe -- well, two questions.

03:32:04 5 THE WITNESS: Okay.

03:32:05 6 THE PRESIDING OFFICER: One, does -- among  
03:32:10 7 the factors or elements that go into the computation  
03:32:14 8 of an RBC --

03:32:15 9 THE WITNESS: Yes.

03:32:16 10 THE PRESIDING OFFICER: -- and would the  
03:32:18 11 better word be "elements" or "factors," or does it  
03:32:21 12 make a difference?

03:32:23 13 THE WITNESS: Both work, I think.

03:32:24 14 THE PRESIDING OFFICER: Thank you. Among  
03:32:25 15 those elements, okay, does geographic location, is  
03:32:31 16 that a factor or an element of the pool? I'm sorry.  
03:32:35 17 Well, first, of the population, and then secondly, of  
03:32:39 18 the pool.

03:32:40 19 THE WITNESS: The NAIC formulas themselves  
03:32:43 20 do not have any geographic variance. But certainly  
03:32:48 21 within -- say within HealthTrust, we do observe  
03:32:52 22 geographic differences in costs across the state.

03:32:55 23 THE PRESIDING OFFICER: Sure. If I might

03:32:56 1 give you a hypothetical so that I understand it.

03:32:59 2 THE WITNESS: Sure.

03:33:02 3 THE PRESIDING OFFICER: Would it be  
03:33:03 4 reasonable to see that California, for instance --  
03:33:15 5 no, let's make it -- I'm sorry -- Indiana; Gary,  
03:33:23 6 Indiana and the factory areas. Let's also pick on  
03:33:29 7 New Jersey.

03:33:30 8 THE WITNESS: Okay. It's often done.

03:33:32 9 THE PRESIDING OFFICER: They may have a  
03:33:35 10 less-healthy environment than --

03:33:38 11 THE WITNESS: Yes.

03:33:42 12 THE PRESIDING OFFICER: -- say, New  
03:33:44 13 Hampshire.

03:33:44 14 THE WITNESS: Yes.

03:33:45 15 THE PRESIDING OFFICER: And therefore,  
03:33:46 16 their RBC would or would not include that element?

03:33:48 17 THE WITNESS: It would indirectly in the  
03:33:49 18 sense that that unhealthy environment would presumably  
03:33:52 19 generate higher per capita costs and claims. And  
03:33:55 20 claims go into the RBC formula. So, yes.

03:33:57 21 THE PRESIDING OFFICER: Thank you. And now  
03:33:59 22 my last -- and this will reveal, if you will, my  
03:34:08 23 more -- I'm asking for more than idle curiosity.

03:34:11 1 THE WITNESS: Sure.

03:34:12 2 THE PRESIDING OFFICER: You testified and  
03:34:14 3 you were given LGC's Exhibit 357, which I don't think  
03:34:19 4 makes any difference to my question.

03:34:21 5 THE WITNESS: Right.

03:34:21 6 THE PRESIDING OFFICER: But what is -- what  
03:34:26 7 is well above 2.0 on the RBC scale? And if I might  
03:34:32 8 borrow your language --

03:34:34 9 THE WITNESS: Yes.

03:34:35 10 THE PRESIDING OFFICER: -- after you --  
03:34:36 11 well, considering that, what is "well-well above  
03:34:43 12 2.0"?

03:34:43 13 THE WITNESS: Okay.

03:34:46 14 THE PRESIDING OFFICER: In your opinion.

03:34:47 15 THE WITNESS: Yes. That's a subjective  
03:34:49 16 question, of course. But I, first of all, would take  
03:34:55 17 some of the answer to that from the NAIC bulletin  
03:34:58 18 that we looked at that basically provides two  
03:35:01 19 criteria for why it should be above 2.0.

03:35:05 20 Basically they say something like you  
03:35:09 21 want a very low probability that the level you're at  
03:35:15 22 is going to ever result in, with losses, you being  
03:35:19 23 down to the 2.0 level. And given -- in answering

03:35:23 1 that kind of subjective criterion, I would respond by  
03:35:26 2 saying, the way I looked at the \$625 million promises  
03:35:33 3 issued at the GMR and do some kind of stress testing,  
03:35:39 4 if you will, and say what if this happened that seems  
03:35:41 5 reasonably plausible, what would that result in  
03:35:45 6 relative to the 2.0 target. So obviously I'm saying  
03:35:49 7 here that "well-well above," in my view for  
03:35:53 8 HealthTrust, means where HealthTrust is, at 4.2.

03:35:57 9 THE PRESIDING OFFICER: Thank you very  
03:35:59 10 much. Bear with me, please.

03:36:15 11 THE WITNESS: Sure.

03:36:29 12 THE PRESIDING OFFICER: Thank you. And  
03:36:30 13 again, it's at my risk.

03:36:31 14 Mr. Saturley, any further questions?

03:36:38 15 MR. SATURLEY: No. But thank you for the  
03:36:41 16 opportunity, Mr. Mitchell.

03:36:42 17 THE PRESIDING OFFICER: Thank you very  
03:36:43 18 much.

03:36:43 19 Mr. Gordon?

03:36:44 20 MR. GORDON: None.

03:36:44 21 THE PRESIDING OFFICER: And Mr. Howard?

03:36:45 22 MR. HOWARD: No thank you.

03:36:46 23 THE PRESIDING OFFICER: Mr. Volinsky?

03:36:48 1 MR. VOLINSKY: None.

03:36:48 2 THE PRESIDING OFFICER: Very good. Thank  
03:36:50 3 you very much, Mr. Riemer. And let's take an  
03:36:52 4 afternoon brief break and get ready for the next  
03:36:54 5 witness or whatever you all decide.

03:37:02 6 (Witness excused.)

03:37:06 7 (Recess at 3:36 p.m.,  
03:47:03 8 resumed at 3:47 p.m.)

03:47:34 9 MR. QUIRK: Mr. Mitchell, we would ask that  
03:47:37 10 our next witness be called at 9:00 a.m. tomorrow  
03:47:39 11 morning and that we adjourn for the day.

03:47:42 12 THE PRESIDING OFFICER: Okay. And do I  
03:47:43 13 understand that that representation is on behalf of  
03:47:47 14 all respondents' counsel?

03:47:49 15 MR. QUIRK: Yes. I've spoken with Attorney  
03:47:51 16 Volinsky and he concurs.

03:47:53 17 THE PRESIDING OFFICER: And all respondents?

03:47:54 18 MR. QUIRK: And all respondents too. Thank  
03:47:56 19 you.

03:47:56 20 THE PRESIDING OFFICER: Very good. And do  
03:47:57 21 you concur, Mr. Volinsky?

03:47:57 22 MR. VOLINSKY: I do as long as we're  
03:48:00 23 protective of a Friday end.

03:48:02 1 THE PRESIDING OFFICER: Understood. So we  
03:48:03 2 are adjourned for the day, or in recess, until  
03:48:10 3 tomorrow morning at 9:00.

03:48:13 4 MR. QUIRK: Thank you.

03:48:18 5 (Whereupon, at 3:48 p.m.,  
03:48:25 6 the proceedings were recessed,  
03:48:27 7 to reconvene on Tuesday, May 8,  
03:48:42 8 2012, at 9:00 a.m.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

C E R T I F I C A T E

I, KIMBERLY A. SMITH, Certified Shorthand Reporter, Certified Realtime Reporter, and Registered Diplomat Reporter in the State of New Hampshire, do hereby certify that I reported in machine shorthand the proceedings had at the taking of the above-entitled hearing, held on the 7th day of May 2012, and that the foregoing is a true, complete, and accurate transcript of said proceedings as appears from my stenographic notes so taken to the best of my ability, and transcribed under my personal direction.

I further certify that I am a disinterested person in the event or outcome of this cause of action.

THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION OF THE CERTIFYING COURT REPORTER.

IN WITNESS WHEREOF, I subscribe my hand and affix my Certified Shorthand Reporter seal this 21st day of May, 2012.

-----  
KIMBERLY A. SMITH, CSR, CRR, RDR